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ABSTRACT

This document presents the texts of two Senate hearings on S. 1156, the Child Victim Witness Protection Act of 1985. The text of the first hearing, held in Birmingham, Alabama, contains the text of S. 1156 and an opening statement by Senator Denton which summarizes the overall policy behind the bill. A statement by Senator McConnell is included. Robert B. Cramer, Jr., district attorney for Madison County, Alabama, testifies on behalf of the Children's Advocacy Center in Huntsville and the National Association of District Attorneys. H. Mark Kennedy, a circuit court judge in Montgomery testifies on behalf of the Children's Trust Fund in Montgomery. Michael C. Roberts, associate professor of psychology at the University of Alabama testifies on behalf of the Society of Pediatric Psychology of the American Psychological Association (APA). Also testifying are Gary L. Aldridge, Alabama State Senator; and Anita Armstrong Morgan, executive director of the Alabama crime victims compensation commission. The text of the second hearing, held in Washington, D.C., contains statements by Senators Denton and Specter, and testimonies by: (1) Lois Haight Herrington, U.S. Assistant Attorney General; (2) Ellen Greenberg, administrative officer for child, youth, and family policy, APA; (3) David S. Liederman, executive director of the Child Welfare League of America, Inc.; (4) Curtis L. Decker, government liaison for the National Association of Protection and Advocacy Systems, Inc.; and (5) Suellen R. Galbraith, program director of the Alabama Developmental Disabilities Advocacy Program. An extensive set of materials submitted for the record is included. (NB)

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ED273920

S. HRG. 99-524

CHILD VICTIM WITNESS PROTECTION ACT OF 1985

HEARINGS

BEFORE THE

SUBCOMMITTEE ON JUVENILE JUSTICE

OF THE

COMMITTEE ON THE JUDICIARY

UNITED STATES SENATE

NINETY-NINTH CONGRESS

FIRST SESSION

ON

S. 1156

A BILL TO AMEND CHAPTER XIV OF THE COMPREHENSIVE CRIME CONTROL ACT OF 1984, RELATING TO VICTIMS OF CRIME, TO PROVIDE FUNDS TO ENCOURAGE STATES TO IMPLEMENT PROTECTIVE REFORMS REGARDING THE INVESTIGATION AND ADJUDICATION OF CHILD ABUSE CASES WHICH MINIMIZE THE ADDITIONAL TRAUMA TO THE CHILD VICTIM AND IMPROVE THE CHANCES OF SUCCESSFUL CRIMINAL PROSECUTION OR LEGAL ACTION

BIRMINGHAM, AL, SEPTEMBER 3, 1985

WASHINGTON, DC, NOVEMBER 19, 1985

Serial No. J-99-48

Printed for the use of the Committee on the Judiciary

CG 019385

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CONTENTS

OPENING STATEMENTS

Page
Denton, Hon. Jeremiah, a U.S. Senator from the State of Alabama 1, 157
McConnell, Hon. Mitch, a U.S. Senator from the State of Kentucky 60, 171
Specter, Hon. Arlen, a U.S. Senator from the State of Pennsylvania, chairman, Subcommittee on Juvenile Justice 156

PROPOSED LEGISLATION

S. 1156—Child Victim Witness Protection Act of 1985 8

CHRONOLOGICAL LIST OF WITNESSES

Tuesday, September 3, 1985

Cramer, Robert B., Jr., district attorney for Madison County 61
Kennedy, Hon. H. Mark, circuit court judge for the 15th Judicial Circuit in Montgomery County and chairman of the children's trust fund 90
Roberts, Michael C., Ph.D., associate professor of psychology at the University of Alabama 105
Aldridge, Hon. Gary L., State Senator from Hartselle, AL 135
Morgan, Anita Armstrong, executive director of the Alabama crime victims compensation commission 143

Tuesday, November 19, 1985

Herrington, Hon. Lois Haight, Assistant Attorney General, Office of Justice Assistance, U.S. Department of Justice 163
Greenberg, Ellen F., Ph.D., administrative officer for child, youth, and family policy, American Psychological Association 178
Liederman, David S., executive director, Child Welfare League of America, Inc 192
Decker, Curtis L., government liaison, National Association of Protection and Advocacy Systems, Inc.; and Suellen R. Galbraith, program director, the Alabama Developmental Disabilities Advocacy Program 201

ALPHABETICAL LISTING AND MATERIALS SUBMITTED

Aldridge, Hon. Gary L.:
  Testimony 135
  Prepared statement 140
Cramer, Robert B., Jr.:
  Testimony 61
  Prepared statement 71
  The District Attorney as a Mobilizer in a Community Approach to Child Sexual Abuse 78
Decker, Curtis L.:
  Testimony 201
  Prepared statement 203
  Responses to written questions from:
    Senator Denton 206
    Senator Specter 207
Denton, Hon. Jeremiah:
  Photographs of missing children 2

Page

- Denton, Hon. Jeremiah—Continued
  - Analysis of S. 1156, by Elizabeth B. Bazan, legislative attorney, Library of Congress 15
  - Intrafamily child sex abuse cases—appendix B: Bibliography of Legal Literature of Child Sexual Abuse, from the National Legal Resource Center for Child Advocacy and Protection, American Bar Association 20
  - From the Alabama Lawyer, January 1985:
    - Sexual Abuse—A Conspiracy of Silence, by Judge Mark Kennedy 26
    - Prevention: A New Legislative Approach, by Senator Gary Aldridge 29
    - Child Abuse and the Juvenile Courts, by Judge Sandra H. Ross 31
    - The DA as a Mobilizer, by district attorney Robert E. Cramer, Jr 33
  - The Justice System and Sexual Abuse of Children, by Jon R. Conte, from the Social Service Review, December 1984 37
  - Children's Competency to Testify, by Gary B. Melton, from Law and Human Behavior, vol. 5, No. 1, 1981 48
  - Letters from:
    - Arthur Mae Norris, president, Alabama Congress of Parents and Teachers, Inc 160
    - Millie Waterman, vice president for legislative activity, the National PTA 161
  - The Disabled Child and Child Abuse, by Donal F. Kline 224
- Galbraith, Suellen R.:
  - Testimony 207
  - Prepared statement 209
  - Responses to written questions from:
    - Senator Denton 216
    - Senator Specter 218
  - ADDAP fact sheet 220
  - Evangelist Convicted in Abuse of His Adopted Deaf-Mute Son, from the Tusecaloosa, News, September 12, 1985 221
  - "Are You Going to Hurt Me, Too?"—An Expert Suggests 10 Steps to Curb Child Abuse, by Andrew H. Vachss, from Parade Magazine, October 13, 1985 221
- Greenburg, Ellen F.:
  - Testimony 178
  - Prepared statement 183
  - Responses to written questions from:
    - Senator Denton 189
    - Senator Specter 191
- Herrington, Hon. Lois Haight:
  - Testimony 163
  - Prepared statement 167
  - Responses to written questions from:
    - Senator Denton 174
    - Senator Specter 177
- Kennedy, H. Mark:
  - Testimony 90
  - Prepared statement 98
- Liederman, David S.:
  - Testimony 192
  - Prepared statement 195
  - Responses to written questions from Senator Denton 200
- Morgan, Anita Armstrong:
  - Testimony 143
  - Prepared statement 148
- Roberts, Michael C.:
  - Testimony 105
  - Prepared statement 114

APPENDIX

- Statement of Barry W. Lynn, legislative counsel, American Civil Liberties Union 231
- Statement of Josephine Bulkley 236
- Letters to Senator Denton from:
  - Lawrence J. DeNardis, Acting Assistant Secretary for Legislation, Department of Health and Human Services 241
  - James K. Stewart, Director, National Institute of Justice 242

Page

News release from the Department of Justice, January 12, 1986 243

Prosecution of Child Sexual Abuse: Innovations in Practice, by Debra Whitcomb, from the National Institute of Justice 246

Letter to Senator Denton from Irving Philips, M.D., president, American Academy of Child Psychiatry 254

AACP statement on protecting children undergoing abuse investigations and testimony, adopted by counsel, February 9, 1986 255

CHILD VICTIM WITNESS PROTECTION ACT OF 1985

TUESDAY, SEPTEMBER 3, 1985

U.S. SENATE,
SUBCOMMITTEE ON JUVENILE JUSTICE,
COMMITTEE ON THE JUDICIARY,
Birmingham, AL.

The subcommittee met, pursuant to notice, at 10 a.m., in courtroom No. 4, U.S. Bankruptcy Courthouse, Birmingham, AL, Hon. Jeremiah Denton (member of the subcommittee) presiding.

Staff present: Richard D. Holcomb, general counsel (Senator Denton).

OPENING STATEMENT OF HON. JEREMIAH DENTON, A U.S. SENATOR FROM THE STATE OF ALABAMA

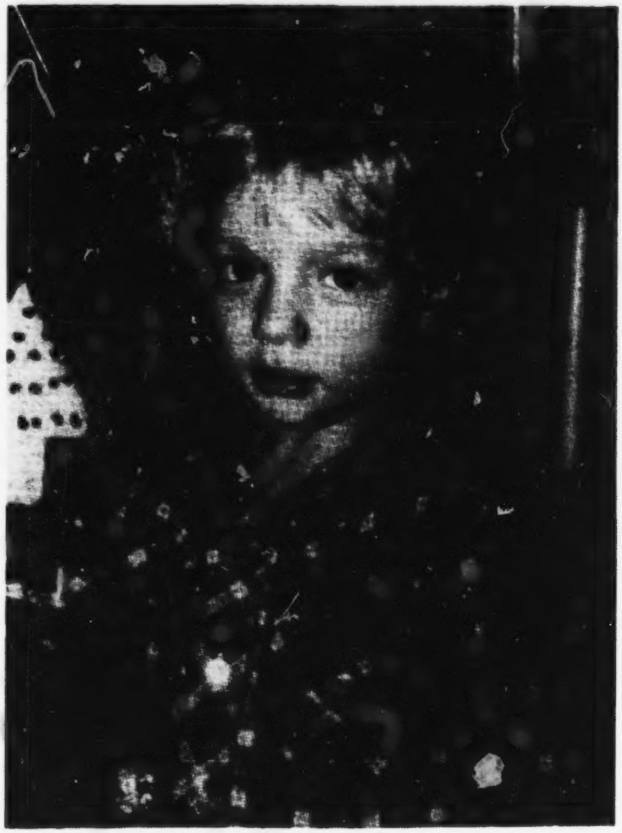
Senator **DENTON**. Good morning, ladies and gentlemen. Before calling the hearing to order, we want to avail ourselves of publicity through the press by displaying photographs of two young Alabamians who have been missing since 1982. The first child is Richard Lawrence DeVaney II, of Madison County, who was kidnaped by his noncustodial mother in 1982. He was last seen at 411 Sharp Boulevard, Madison, AL.

The second child is Christopher Allen Fulmer, F-u-l-m-e-r, of Birmingham, who was also kidnaped by his noncustodial mother and was last seen in the East Lake-Roebuck area of Birmingham. We have flyers on these two children, which I would like to distribute. With the flyer on Christopher, I would like to distribute an artist's rendition of what Christoper should look like today, and that is what we have right there. We also have his original photograph.

So if the press will please publicize these flyers, particularly television, we would ask the public to contact the National Center for Missing and Exploited Children, the telephone number is 1-800, and then the numbers that correspond with the words "The Lost," T-h-e L-o-s-t, or the Alabama Missing Children Bureau, 1-800-228-7688. If you have any information about these children—1-800-228-7688.

[Photographs follow:]

HAVE YOU SEEN THIS CHILD?



Richard Lawrence DeVaney, II (Ricky)

Birthdate: 4-23-79
Birthplace: Madison County, Alabama
Hair: Blond
Weight: 30
Eyes: Blue
S.S. #: 417-11-4301
Last Seen: April 16, 1982, at 411 Sharp Blvd., Madison, Alabama

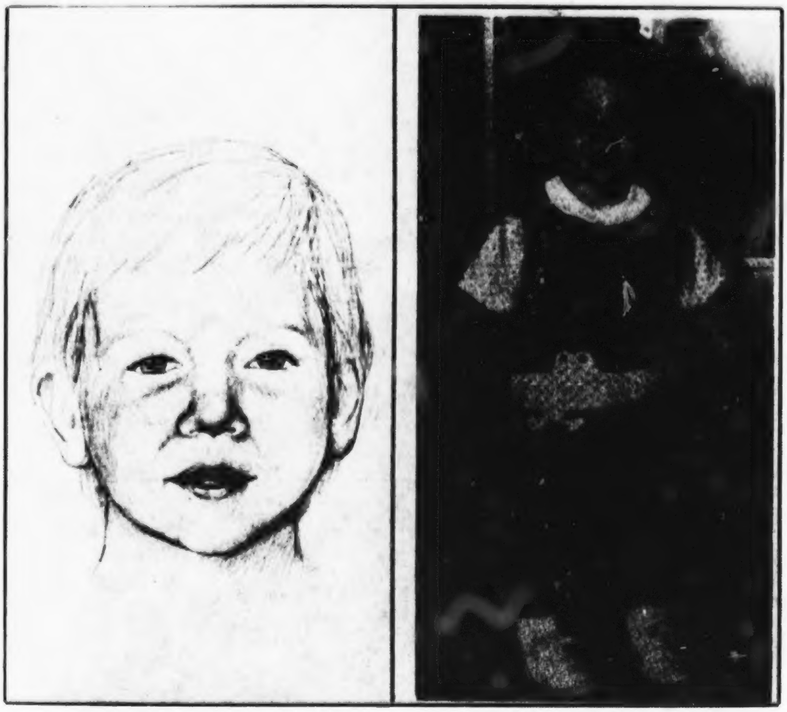
If you have any information that could lead to the recovery of this missing child, call the toll-free National Hotline: 1-800-843-5678. In Canada, call collect: 202-634-9836. For more information, write the National Center for Missing and Exploited Children, 1835 K Street N.W., Suite 700, Washington, D.C. 20006.

HAVE YOU SEEN THIS CHILD?

Christoper Allen Fulmer
Birthdate: 4-3-81
Birthplace: Birmingham, Alabama
Hair: Blonde
Weight: 26
Eyes: Blue
Last Seen: East Lake/Roebuck Area, Birmingham, Alabama

If you have any information that could lead to the recovery of this missing child, call the toll-free National Hotline: **1-800-843-5678**. In Canada, call collect: 202-634-9836. For more information, write the National Center for Missing and Exploited Children, 1835 K Street N.W., Suite 700, Washington, D.C. 20006.

MISSING



CHRISTOPHER ALAN FULMER

- Could be going by an alias • Blonde hair
- Big blue eyes • Cowlick on both sides of forehead
- Double nipple on right breast • Birth Date 4-2-81

Contact The National Center For Missing And Exploited Children 1-800-843-5678

Senator **Denton**. Good morning again. The hearing will come to order. The subcommittee is meeting today to receive testimony on S. 1156, the Child Victim Witness Protection Act of 1985. The hearing will also develop a record on the leadership role of the State of Alabama in fighting child abuse. I might say the State is leading in a number of areas, including the pursuit of the school prayer issue, among others.

As originator of S. 1156, I have been given the honor of chairing the hearing. The subcommittee will hold a second hearing, which will be attended by other Senators in Washington in November to receive testimony from the administration and a number of national organizations.

The witnesses today include Alabama authorities, the Honorable Robert E. Cramer, Jr., district attorney for Madison County, who will testify on behalf of the Children's Advocacy Center in Huntsville and the National Association of District Attorneys.

The second witness will be the Honorable H. Mark Kennedy, circuit court judge for the 15th judicial circuit in Montgomery, who will testify on behalf of the Children's Trust Fund in Montgomery.

Prof. Michael C. Roberts, of the University of Alabama, will be testifying on behalf of the Society of Pediatric Psychology of the American Psychological Association.

The Honorable Gary L. Aldridge, Alabama State Senator, District No. 3; and, finally, Anita Armstrong Morgan, executive director of the Alabama Crime Victims Compensation Commission.

Before I call on our first witness, I would like to take a few moments to summarize the overall policy behind S. 1156.

The bill deals with child abuse, an issue which has exploded into public view during the past several years. I have been involved in fighting child abuse as a member of the Juvenile Justice Subcommittee of the Judiciary Committee, and as chairman of the Family and Human Services Subcommittee of the Labor and Human Resources Committee.

So for my entire time in the Senate I have fought child abuse, an issue, which is not only one which affects a number of people who are not voters—there is not much of a constituency for a political constituency there among children, but affects the victim's family and society as a whole.

There is a tremendous problem, a terrible blot on what this Nation has as its ultimate objective, the pursuit of happiness. So I am interested in child abuse from the point of view governmentally of promoting the general welfare.

One need only to read the newspapers or to watch television news to realize that child abuse is a problem of immense proportions. The National Center for Missing and Exploited Children projects that on a national basis that one out of three minor girls and one out of every seven minor boys will be sexually abused. Reports from the Children's Trust Fund of Montgomery indicate that over 28,000 young Alabamians were abused in 1984. Those are the ones that we know about. A similar number of children could be abused in Alabama this year.

Children who have been abused or sexually molested have suffered extreme trauma. Often, however, the abused children suffer additional trauma and even intimidation undergoing the procedures in our justice system, and can receive some trauma from other community agencies because of insensitive investigative and adjudicative procedures.

A most flagrant example of an insensitive procedure is the practice in some jurisdictions of repeated interrogation of a child victim. In many cases the child is subjected to countless grueling and detailed investigative interviews.

Perhaps many of you saw the almost week long appalling exposé of a defense attorney who kept reminding the child of an alleged part of the trauma the child underwent in conjunction with the abuse, in that he kept reminding the child of the fact that the abuser has threatened one of the child's parents' lives. He kept asking the child if he remembered that. Many observers considered that device to be a cruel intimidation of the child victim.

Not only do duplicative and insensitive interview procedures lead to greater trauma in the child victim and to his or her family, but they frequently result in less effective intervention and prosecution. Rather than providing the child victim with the necessary respect, understanding, and compassion, the procedures reduce the child victim to an automaton, caught in the adult drama of the courtroom.

As the U.S. Supreme Court noted in the famous case of *New York* v. *Ferber*, "The prevention of sexual exploitation and abuse of children constitutes a government objective of surpassing importance." It is with that objective in mind that I introduce the Child Victim Witness Protection Act of 1985.

By encouraging the States to implement protective reforms for the investigation and adjudication of child abuse cases to minimize the additional trauma to the child victim and to improve the chances of successful criminal prosecution or legal action, we will pursue the objective of preventing sexual exploitation through deterrence, and we will at least preclude additional trauma to the child victim.

The bill is based on recommendations from the Septemer 1984 final report of the Attorney General's Task Force on Family Violence and on the October 1982 report from the National Legal Resource Center for Child Advocacy and Protection of the American Bar Association entitled "Recommendations for Improving Legal Intervention in Intrafamily Child Sexual Abuse Cases." While these two reports are too voluminous to be included in the hearing record, I would like to incorporate them by reference. Under the proposed legislation, the level of the Crime Victim's Fund would be increased by $10 million, to allow the Attorney General to provide modest Federal financial assistance to the States to implement programs and procedures established by previously enacted statutes which minimize additional trauma to the child victim and improve the chances of successful criminal prosecution or legal action.

In the years of budgetary crunch, it's important to note that the Child Victim Witness Protection Act, which we are dealing with here, will not impose an additional burden on the taxpayer, and will not impose any additional responsibility financially on the Federal Government. As a part of the Crime Victim's Fund, this act would be financed from several sources.

First, fines collected by the Federal Government; second, penalty assessments levied upon convicted Federal defendants; third, forfeited bail bonds and collateral in Federal criminal cases; and, fourth, certain profits made by criminals, particularly those engaged in this type of activity from publishing their misdeeds in literary, visual, and audio productions. In other words, the bill would impose a type of user's fee, as it were, on criminals in order to protect child abuse victims.

Under the bill the Attorney General would allot to each eligible State $200,000, plus an amount that is proportioned according to a population ratio. The bill sets forth suggested guidelines for the State statutes which they would have to implement to become eligible for the aid. And those statutes would minimize additional trauma to the child victim and improve the chances of successful prosecution or legal action previously mentioned.

Much of that will be part of the discussions today with the witnesses. I believe that the Child Victim Witness Protection Act would allow the special needs of physically and sexually abused children to be addressed effectively.

Before calling on our first witness, I would like to take the opportunity to place in the record a copy of this bill, S. 1156, a copy of an analysis of the bill prepared by the Congressional Research Services of the Library of Congress, and a number of articles and an extensive bibliography about child abuse victims in the courtroom setting.

I would like to also place in the record a statement by my colleague, Hon. Mitch McConnell, Republican of Kentucky, who is an active member of the subcommittee, but whose schedule prevented him from attending today's hearing. Some of you may know that Senator McConnell was born in Alabama.

[The text and analysis of S. 1156, articles, and the prepared statement of Senator McConnell follow:]

II

99TH CONGRESS
1ST SESSION

S. 1156

To amend chapter XIV of the Comprehensive Crime Control Act of 1984, relating to victims of crime, to provide funds to encourage States to implement protective reforms regarding the investigation and adjudication of child abuse cases which minimize the additional trauma to the child victim and improve the chances of successful criminal prosecution or legal action.

IN THE SENATE OF THE UNITED STATES

MAY 16 (legislative day, APRIL 15), 1985

Mr. DENTON introduced the following bill; which was read twice and referred to the Committee on the Judiciary

---

A BILL

To amend chapter XIV of the Comprehensive Crime Control Act of 1984, relating to victims of crime, to provide funds to encourage States to implement protective reforms regarding the investigation and adjudication of child abuse cases which minimize the additional trauma to the child victim and improve the chances of successful criminal prosecution or legal action.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION. 1. This Act may be cited as the "Child Victim Witness Protection Act of 1985".

FINDINGS AND PURPOSE

SEC. 2. (a) The Congress finds and declares that—

(1) child abuse may result in serious and severe physical and psychological trauma to the child victim;

(2) in the investigation and adjudication of child abuse cases, the child victim may be subjected to such demanding procedures as repeated interrogation and direct intense confrontation with the offender which may be tantamount to a second victimization;

(3) some evidentiary procedures, such as the hearsay rule, in effect require the child victim to testify in court, thereby forcing the child to relive in a public setting and in the presence of the offender the episode of exploitation or abuse;

(4) various legal reforms such as coordinated legal proceedings, videotaped depositions, and closed-circuit television have been introduced in a number of States and offer protection to the child victim from additional trauma resulting from the investigation and adjudication of the child abuse case;

(5) in enacting the Victims of Crime Act of 1984, chapter XIV of title II of Public Law 98-473, the Congress mandated that priority be given to eligible crime victim assistance programs which provide assistance to victims of child abuse;

(6) in defining the term "services to victims of crime" the Congress expressly included "assistance in participating in criminal justice proceedings"; and

(7) while this language was designed to provide assistance to individual victims of crime, there is a great need for broad-based intervention at the State and local levels through legal reforms and procedures specifically to address the needs of victims of child abuse.

(b) The Congress declares that the purpose of this Act is to provide funds to encourage States to implement protective reforms regarding the investigation and adjudication of child abuse cases which minimize the additional trauma to the child and improve the chances of successful criminal prosecution or legal action.

ESTABLISHMENT OF FUND

SEC. 3. Chapter XIV of the Comprehensive Crime Control Act of 1984 (title II, Public Law 98–473), relating to victims of crime, is amended by adding between section 1404 and section 1405 the following new section:

"CHILD VICTIM WITNESS PROTECTION GRANT

"SEC. 1404A. (a) The Attorney General is authorized to make additional annual grants and other payments from the Crime Victims Fund under section 1402 to the States for the protection of victims of child abuse in accordance with the eligibility requirements of this section.

"(b)(1) A State is eligible for assistance under this section if the Attorney General determines that the State has enacted statutes with respect to the investigation and adjudication of child abuse cases which—

"(A) minimize the additional trauma to the child victim; and

"(B) improve the chances of successful criminal prosecution or legal action.

Any assistance received by the State under this section shall be used to implement the programs and procedures established by the statutes enacted pursuant to this section.

"(2) From the amounts in the fund, the Attorney General shall allot to each State meeting the eligibility requirements of paragraph (1)—

"(A) $200,000, plus,

"(B) an amount which bears the same ratio to such remainder as the population in the State bears to the population in all States meeting the eligibility requirements of paragraph (1).

"(c)(1) For purposes of subsection (b)(1)(A), procedures to minimize additional trauma to the child victim may include—

"(A) establishing interdisciplinary teams of child abuse professionals such as law enforcement officers, child protective service workers, prosecutors, child advocates, mental health professionals, family counselors, and medical personnel for handling child abuse cases;

"(B) coordination of civil and criminal court proceedings involving intrafamilial child abuse;

"(C) providing for special units and training relating to child development, legal issues, and the dynamics of child abuse for law enforcement, legal, judicial, child welfare, family counseling, and mental health personnel to deal with the child victim;

"(D) providing for a support person to the child victim prior to and during the course of any legal or administrative proceeding to protect the interests of that child; or

"(E) granting courts the authority to enter protective orders to protect the child victim from additional abuse.

"(2) For purposes of subsection (b)(1)(B), reforms designed to improve the chances of successful criminal prosecution or legal action in child abuse cases may include—

"(A) establishing a specific definition of child sexual abuse;

"(B) extending the statute of limitations in criminal cases of child abuse;

"(C) modifying certain rules of evidence to allow for the admission of the child victim's hearsay statement of abuse, to permit leading questions to be asked of the child victim, to permit the use of anatomically correct dolls and drawings to describe the abuse, and to establish a presumption that children are competent to testify; or

"(D) establishing procedures for the videotaping of the child victim's statement and testimony or the use of closed-circuit television to protect the child victim from additional trauma.

"(3) Each State is encouraged to develop innovative approaches not described in paragraphs (1) and (2) to achieve the objectives of minimizing the additional trauma to the child victim and improving the chances of successful criminal prosecution or legal action in child abuse cases.

"(d) As soon as practicable after the date of enactment of this section, the Attorney General shall issue such regulations as may be necessary to implement this section. In establishing regulations, the Attorney General shall consider the purposes of this section.

"(e) The Attorney General is hereby authorized to use up to $10,000,000 from the Crime Victim's Fund each fiscal year for the purposes of this title.".

INCREASE IN CRIME VICTIM'S FUND LEVEL

SEC. 4. (a) Subsection (c)(1) of section 1402 of the Victims of Crime Act of 1984 is amended by striking out "the sum of $100 million" and inserting in lieu thereof "the sum of $110,000,000".

(b) Paragraph (2) of subsection (2) of section 1402 is amended to read as follows:

"(2) Of the total deposited in the Fund during a particular fiscal year—

"(A) out of the first $100,000,000 deposited in the Fund, fifty percent shall be available for grants under section 1403 and fifty percent shall be available for grants under section 1404; and

"(B) any amounts deposited in the Fund in excess of $100,000,000 but not exceeding $110,000,000 shall be available for grants under section 1404A.".

○

Congressional Research Service
The Library of Congress

Washington, D.C. 20540

July 29, 1985

TO: Senate Judiciary Committee
Subcommittee on Security and Terrorism
Attention: Rick Holcomb

FROM: American Law Division

SUBJECT: Analysis of S. 1156, the Child Victim Witness Protection Act of 1985

This memorandum is in response to your request for an analysis of S. 1156, a bill

> to amend Chapter XIV of the Comprehensive Crime Control Act of 1984, relating to victims of crime, to provide funds to encourage States to implement protective reforms regarding the investigation and adjudication of child abuse cases which minimize the additional trauma to the child victim and improve the chances of successful criminal prosecution or legal action.

This measure, styled the "Child Victim Witness Protection Act of 1985," would add a new Section 1404A to Chapter XIV of the Comprehensive Crime Control Act of 1984, P.L. 98-473. Our examination of this measure is limited, of necessity, by your time constraints.

S. 1156 would authorize the Attorney General to make annual grants and payments from the Crime Victims Fund, established by Sec. 1402 of Chapter XIV of P.L. 98-473, to states he determines have enacted statutes as to child abuse cases which:

> (A) minimize the additional trauma to the child victim; and
> (B) improve the chances of successful criminal prosecution or legal action.

Sec. 1404A(a) and (b)(1). To each state found eligible under these criteria the Attorney General would allot from the fund $200,000 plus a pro rata share of the remainder "bear[ing] the same ratio to such remainder as the population in the State bears to the population in all States meeting the eligibility requirements" of Sec. 1404A(b)(1). Sec. 1404A(b)(2). Such assistance received by the state pursuant to the provisions of Sec. 1404(b)(1) must be used "to implement the programs and procedures established by the statutes enacted pursuant to this section."

Subsection (c)(1) of Sec. 1404A gives examples of procedures which would be deemed to minimize additional trauma to the child victim:

> (A) establishing interdisciplinary teams of child abuse professionals such as law enforcement officers, child protective service workers, prosecutors, child advocates, mental health professionals, family

> counselors, and medical personnel for handling child abuse cases;
> (B) coordination of civil and criminal court proceedings involving intrafamilial child abuse;
> (C) providing for special units and training relating to child development, legal issues, and the dynamics of child abuse for law enforcement, legal, judicial, child welfare, family counseling, and mental health personnel to deal with the child victim;
> (D) providing for a support person to the child victim prior to and during the course of any legal or administrative proceeding to protect the interests of that child; or
> (E) granting courts the authority to enter protective orders to protect the child victim from additional abuse.

Under Subsection (c)(2), measures designed to improve chances of successful criminal prosecution or legal action in child abuse cases are deemed to include:

> (A) establishing a specific definition of child sexual abuse;
> (B) extending the statute of limitations in criminal cases of child abuse;
> (C) modifying certain rules of evidence to allow for the admission of the child victim's hearsay statement of abuse, to permit leading questions to be asked of the child victim, to permit the use of anatomically correct dolls and drawings to describe the abuse, and to establish a presumption that children are competent to testify; or
> (D) establishing procedures for the videotaping of the child victim's statement and testimony or the use of closed-circuit television to protect the child victim from additional trauma.

The examples provided in Subsections (c)(1) and (c)(2) are not intended to be exclusive. Sec. 1404A(c)(3).

The Attorney General, as soon as practicable after the enactment of the measure, is directed to issue such regulations as are needed to implement Sec. 1404A. Sec. 1404A(d). Up to $10,000,000 of the Child Victim's Fund is made available to the Attorney General each fiscal year "for the purposes of this title" in Sec. 1404A(e). It may be worthy of note here that this language is not limited to the purposes of Sec. 1404A, but rather appears to make this sum available for any of the purposes of Title II of P.L. 98-473, which title includes the entire Comprehensive Crime Control Act of 1984. Alternatively, the "title" referred to might be interpreted to be Title 18 of the United States Code. In context, it seems likely that this may be intended to refer not to the "purposes of this title" but rather to the "purposes of this section", referring to Sec. 1404A. This would parallel the language of the previous subsection, Sec. 1404A(d). Further, in conforming amendments with respect to Sec. 1402 of P.L. 98-473 (dealing with the Crime Victim's Fund level), Section 4 of S. 1156 would increase the maximum amount in the fund from $100,000,000 to $110,000,000, of which the amount over $100,000,000 is to be available for Sec. 1404A grants. Therefore, a reference in Sec. 1404A(e) to the "purposes of this section," rather than the "purposes of this title," would seem to be consistent with other pertinent portions of S. 1156.

A Possible Constitutional Issue Raised by the Bill

By encouraging states to permit introduction of hearsay testimony of the child victim, videotaping of the child victim's statement or testimony, or the use of closed-circuit television, and by encouraging states to establish a presumption of competency to testify for children, S. 1156 draws attention to the scope of the constitutional protection of the defendant's right "to be confronted with the witnesses against him" under the Sixth Amendment of the U.S. Constitution. In 1895, the U.S. Supreme Court in Mattox v. United States, 156 U.S. 237, 242-43 (1895), described the confrontation clause as follows:

> The primary object of the constitutional provision in question was to prevent depositions or ex parte affidavits . . . being used against the prisoner in lieu of a personal examination and cross-examination of the witness in which the accused has an opportunity, not only of testing the recollection and sifting the conscience of the witness, but of compelling him to stand face to face with the jury in order that they may look at him, and judge by his demeanor upon the stand and the manner in which he gives his testimony whether he is worthy of belief."

The right so described is

> [o]ne of the fundamental guarantees of life and liberty . . . long deemed so essential for the due protection of life and liberty that it is guarded against legislative and judicial action by provisions in the Constitution of the United States and in the constitutions of most if not all of the States composing the Union.

Kirby v. United States, 174 U.S. 47, 55, 56 (1899).[1/]

More recently, the Court has had occasion to examine the interface between the Confrontation Clause and the hearsay rules in California v. Green, 399 U.S. 149 (1970):

> While it may readily be conceded that hearsay rules and the Confrontation Clause are generally designed to protect similar values, it is quite a different thing to suggest that the overlap is complete and that the Confrontation Clause is nothing more than a codification of the rules of hearsay and their exceptions as they existed historically at common law. Our decisions have never established such a congruence; indeed, we have more than once found a violation of confrontation values even though the statements in issue were admitted under an arguably recognized hearsay exception. See Barber v. Page, 390 U.S. 719 (1968); Pointer v. Texas, 380 U.S. 400 (1965). The converse is equally true: merely because evidence is admitted in violation of a long-established hearsay rule does not lead to the automatic conclusion that confrontation rights have been denied.
>
> Given the similarity of the values protected, however, the modification of a State's hearsay rules to create new exceptions for the admission of evidence against a defendant, will often raise questions of compatibility with the defendant's constitutional right to confrontation. Such questions require attention to the reasons for, and the basic scope of, the protections offered by the Confrontation Clause.

[1/] For further discussion of this clause, see The Constitution of the United States of America, Analysis and Interpretation 1211-1214 (1973 and 1982 Supp.).

399 U.S. at 155-56. The Court described the purposes behind confrontation as follows:

> Confrontation: (1) insures that the witness will give his statements under oath--thus impressing him with the seriousness of the matter and guarding against the lie by the possibility of a penalty for perjury; (2) forces the witness to submit to cross-examination, the "greatest legal engine ever invented for the discovery of truth"; (3) permits the jury that is to decide the defendant's fate to observe the demeanor of the witness in making his statement, thus aiding the jury in assessing his credibility.

Id., at 158.

In Ohio v. Roberts, 448 U.S. 56 (1980), the Court further elucidated the relationship between the Confrontation Clause and hearsay:

> The Confrontation Clause operates in two separate ways to restrict the range of admissible hearsay. First, in conformance with the Framers' preference for face-to-face accusation, the Sixth Amendment establishes a rule of necessity. In the usual case (including cases where prior cross-examination has occurred), the prosecution must either produce, or demonstrate the unavailability of, the declarant whose statement it wishes to use against the defendant. . . .
>
> The second aspect operates once a witness is shown to be unavailable. Reflecting its underlying purpose to augment accuracy in the factfinding process by ensuring the defendant an effective means to test adverse evidence, the Clause countenances only hearsay marked with such trustworthiness that "there is no material departure from the reason of the general rule." Snyder v. Massachusetts, 291 U.S. at 107; . . . .
>
> . . .
>
> In sum, when a hearsay declarant is not present for cross-examination at trial, the Confrontation clause normally requires a showing that he is unavailable. Even then, his statement is admissible only if it bears adequate "indicia of reliability." Reliability can be inferred without more in a case where the evidence falls within a firmly rooted hearsay exception. In other cases, the evidence must be excluded, at least absent a showing of a particularized guarantee of trustworthiness.

448 U.S. at 65-67 (citations and footnotes omitted).

These principles might come into play with respect to some state provisions enacted in response to the measure here under consideration. Concerns over confrontation rights are clearly implicated where the child victim's out-of-court statements are admitted (particularly if the child does not testify), where the child's statement or testimony is presented by video-tape rather than in person, and where closed circuit television is used. Effective cross-examination may be eliminated or hampered by such a mechanism. Jury observation of the indicia of credibility may also be circumscribed. Awareness of the seriousness of the charge may be lessened where the child is not under oath, or where the child need not face the person being accused of the criminal act. Similarly, where a presumption of competency is statutorily mandated, less attention may be paid to the particular child's understanding of the difference between truth and falsity or fantasy.

On the other hand, where one is dealing with a child victim of a traumatic incident, the stress of the traditional courtroom setting and procedures, and the fear or discomfort engendered by face-to-face confrontation of an individual who may have victimized the child, may inhibit the child's ability to discuss the incident, thereby potentially adversely affecting the truth-seeking process. In addition, these factors may increase the trauma of the incident to the child, thereby potentially adding to the harm already done to the victim. This concern is reflected by the bill itself in its purposes and findings section. Thus, potentially competing rights, policies and interests would appear to be called into play by the proposal encompassed in S. 1156. How these are resolved will depend in large part upon the language of the various state provisions enacted in response thereto, and their application by the courts in the various states called upon to interpret them.

We have found two federal court decisions where confrontation issues have been raised in the admission of hearsay with respect to out-of-court statements by child victims of sexual abuse, in criminal proceedings arising out of the sexual assaults. In both cases, the courts found the admission of the hearsay acceptable as "excited utterances" under Rule 803(2) of the Federal Rules of Evidence. On the facts before them the courts found sufficient indicia of trustworthiness and reliability to determine that the defendant's Sixth Amendment confrontation rights had not been violated by the admission. *Haggins* v. *Warden, Fort Pillow State Farm*, 715 F.2d 1050 (6th Cir. 1983); *United States* v. *Nick*, 604 F.2d 1199 (9th Cir. 1979) (per curiam).[2/]

Conclusion

S. 1156 would create a grant program to encourage states to enact legislation which would "minimize the additional trauma to the child victim" and "improve the chances of successful criminal prosecution or legal action" in child abuse cases. Examples of approaches which might be taken in such statutes are given. Some of the suggested approaches appear likely to raise Sixth Amendment Confrontation Clause issues. How those issues are resolved would depend upon the language of the statutes enacted by the states and their interpretation by the courts called upon to apply them.

We hope that this will be of assistance.

Elizabeth B Bazan /em
Elizabeth B. Bazan
Legislative Attorney

[2/] *Cf.*, *State of Washington* v. *Ryan*, 103 Wash. 2d 165, 691 P.2d 197 (1984); *State of Kansas* v. *Myatt*, 697 P.2d 836 (S.Ct. Kan. 1985).

National Legal Resource Center for Child Advocacy and Protection
American Bar Association

Recommendations for Improving Legal Intervention in Intrafamily Child Sexual Abuse Cases

> *"The prevention of sexual exploitation and abuse of children constitutes a government objective of surpassing importance."*
> *New York v. Ferber*
> *United States Supreme Court*
> *July 2, 1982*

APPENDIX B

Bibliography of Legal Literature on Child Sexual Abuse

This bibliography includes references which in whole or significant part deal with legal issues relating to child sexual abuse. For non-legal bibliographies, contact the National Center on Child Abuse and Neglect, P.O. Box 1182, Washington, D.C., 20013, (202) 245-2840, or Herner and Company, 1700 N. Moore Street, Arlington, Virginia, 22209, (703) 558-8222.

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Sexual Abuse — A Conspiracy of Silence

by
Judge Mark Kennedy

A 14-year-old female child was found wandering nude and dazed along a highway. He had tied her hands behind her, ripped off her clothing and sexually abused her. Later while still bound, her arms were severed below the elbows with a hatchet before she was discarded in a culvert.

The 12-year-old was but a child herself when she began suffering from morning sickness in her third month of pregnancy. She and her 14-year-old sister had had a lover for four years — their father.

In Jordan, Minnesota, 16 adults currently are under investigation for conducting a sex ring in which more than two dozen children were sexually molested. Eight of the suspects are women.

The smell of freshly mown hay or the scent of a certain cologne brings on gruesome flashbacks for Susanne: how her stepfather had forced her to have sex with him at their rural farm. Sometimes he would single her out from her seven siblings to ride into town with him. "He would stop by the side of the road and make me have oral sex with him until he climaxed," she said. Her mother was ill and her stepfather threatened she would die if Susanne told anyone. "I believed him. I thought my mom would die and I would be left with this man." Only now, after years of therapy, does Susanne realize she was not responsible for her abuse.

In 1983, the National Survey of the Incidence and Severity of Child Abuse and Neglect found there were 44,700 reported cases of children who were victims of some form of sexual exploitation. The survey noted its findings were based on conservative research procedures and in all probability was only reflective of the "tip of the iceberg."

Various researchers estimate as many as 500,000 American children will be molested this year. Few offenders will be reported, fewer will be prosecuted and fewer still of the victims will be reached. Millions of today's adults are the sexually abused victims of the past. The University of New Hampshire reported in a recent study 19 percent of all American women and nine percent of all American men were sexually victimized as children, and possibly as many as two to five million women have had incestuous relationships.

The sexual exploitation of children is not an invention of twentieth century man. Our history is replete with

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the practices of societies past in ways we now can identify as sexually abusive. The further a practice reaches back into primitive time for its origin, the more universal becomes its extent.

Early man introduced rituals of rites of passage to secure full life and to escape from evil. Through sexual acts and mutilations, pubescent children symbolically died, were reborn and elevated to new states of being. It was in search of this higher plane of immortality and triumph over the extinction of the body that infants were subjected to circumcision; subincisions; neck rings; lip plugs; torn flesh, joints and muscles.

Aristotle reminded us to never confuse love with sexual passion. Sexual activity among the ancients had, at best a tenuous connection with love and friendship.

Boy-love among the Greeks, according to Plato, aimed at the improvement of the beloved youth. It was a journey towards spiritual perfection and immortality. Through sexual acts with adolescent males, man projected the living image of his immortal soul into the spirit of the youth. Plutarch explained Roman boys wore a gold ball around their neck when they were very young so men could tell which ones were available when they encountered the adolescents in the nude.

The Dark and Middle Ages of Europe found widespread mass persecutions. Innumerable children were burned at the stake as heretics for any form of overt sexuality or sexual fantasy. It was a time when man felt compelled to struggle for dominance over his own animal instincts and nature.

Renaissance man considered prostitution involving children socially acceptable and highly pleasurable.

In "Venus and Adonis," Shakespeare wrote:

> "Who plucks the bud before one leaf put forth?
> If springing things be any jot diminish'd,
> They wither in their prime, prove nothing worth . . .
> To grow unto himself was his desire."

This powerful protest of early initiation into sexual experience argued for the prolonging of innocence as the key to mature strength.

The vilest feature of the whole Victorian scene was the "Victorian Underworld" where child prostitutes and widespread distribution of sexual material, including the new art form, photography, abounded. It was an age of the love of little girls, the Lolita syndrome. Lewis Carroll wrote, "I confess I do not admire naked boys. They always seem to me to need clothes — whereas one hardly sees why the lovely forms of girls should ever be covered up."

In 1912, Kraft Ebing identified the term "pedophilia erotica" as being "adult behavior that manifests erotic sexual desire for children."

"The Rene Guyon Society of California, which boasts of over 9,000 in membership, has as its motto: 'Sex before 8 or else it's too late.' "

The past two generations have seen an increase in child pornography, the use of children in a variety of sordid sexual activities and the stressing of incest and pedophilia in the mass marketing of sex.

The Rene Guyon Society of California, which boasts of over 9,000 in membership, has as its motto: "Sex before 8 or else it's too late." Its primary aim is to reduce or eliminate the age of consent for sexual activity and to encourage early sexual initiation of children so as to expand and mature the "whole being." A requirement for membership is a sworn affidavit the prospective member has deflowered a child under the age of eight (male or female). The International Pedophilic Information Exchange held its organizational meeting in Wales in 1977. They have, as their primary goal, the establishment of the rights of adults to use "consenting" children for sexual adventure.

Our society has clung to the sexual appetite of early man for the young, but through centuries of evolutionary change in our moral concepts and ideals, what was once an exercise, however perverted, in man's struggle for perfection, has now become a routine perversion that points to one's weakness rather than strength. Sexual abuse now represents the bankruptcy of talent rather than the quintessence of it.

Sexual abuse is less likely to correlate to poverty than other forms of violent acts committed upon children. It is equally prevalent in middle and upper class homes and remains one of the most underreported forms of child maltreatment, the impact of which is not apparent for many years. Family members, who often are the only people aware of the incidents, frequently are hesitant to report for fear of social censure, public scrutiny, possible removal of the family breadwinner and the fact that at the time there may appear no tangible physical harm. Children themselves may not report incidents of sexual abuse because of ignorance, fear of reprisal, fear they will be blamed or guilt over any physical pleasure they may have experienced.

Cases are often discovered in accidental ways: A day-care worker finds a 4-year-old trying to have oral sex with a playmate. A school nurse traces a first grader's painful itch to gonorrhea. A neighbor sees a little girl playing suggestive games with a doll.

Today children are being identified who experience a response much like the post-traumatic stress disorder afflicting some war veterans: They have severe nightmares and become hysterical in situations reminding them of the assault. Often it is not the nature of the violation that controls the intensity of the child's delayed reaction, but rather the degree of coercion used by the perpetrator. The long-term prognosis for sexually induced post-traumatic stress is usually dim if one expects full and complete recovery.

Using anatomically correct dolls, Providence Upchurch, M.S., counsels young victims of sexual abuse at the Montgomery Area Family Violence Program's Sunshine Center. She is also a frequent speaker on abuse for civic organizations.

If identifying a victim seems difficult, prosecuting the offender often seems impossible. Children frequently are hesitant to testify against a parent or loved one. If they do, they usually are met with vehement denial — and the system all too often finds it difficult to take the word of a child over that of an adult.

In many cases of prosecution, the child can expect another assault in the courtroom. In a growing number of courts, however, children are being heard and believed. The right of children to testify before a court has long been recognized in our system, provided the court is satisfied the child as a witness knows the difference between right and wrong and is capable of self-expression. Many legal professionals are realizing there is no valid correlation between truthfulness and age and have become innovative in their approach to accommodating child witnesses as they face the accused.

One child was allowed to testify from a social worker's lap, while another terrified child preferred sitting under the prosecution table. The use of pretaped video testimony during which the child is questioned by the state and the defense is becoming increasingly popular. Many courts allow the use of anatomically correct dolls for demonstration by the child, while others allow the child to draw a picture story to explain what occurred. One child advocate remarked, "We have to quit pretending that kids have to testify like adults. If all they can do is show, that should be enough."

Both women and children long have been stigmatized when it comes to their credibility in sexual assault cases. Recognizably, children have at times invented stories of sexual misconduct for a variety of reasons. More often, however, children are retracting true facts as being false when placed under coercion by family members and perpetrators. Trained sexual abuse counselors argue fantasy can be separated from fact by listening to the allegations of the victim. "You don't expect a child under the age of five to understand the physical aspects of sexual intercourse," explained one counselor. "When a child tells you that her mother's boyfriend put his thing in her and pee-peed, you can bet money that it is no fairy tale."

There is a divergence in both philosophy and practice in the handling of the convicted abuser. The hard-line approach calls for stiff penalties and incarceration. At the other end of the spectrum is straight probation and a slap on the wrist. A convicted sex offender, referred to as a "diddler" in the prison community, is likely to be beaten, raped or killed by fellow inmates who relegate the offender to "fair game" status in the penitentiary community. Most systems do not offer counseling for sex offenders and view them as a pariah who requires special treatment and protection.

Probated defendants often are referred to counseling or treatment centers, but frequently are lost in the high case loads of the courts and probation staffs. "We are not reaching the root of the problem through court ordered counseling," remarked a probation officer. "As soon as they figure out what we want to hear, they sing like canaries until their time is up, then they fly right back to their nest."

One victimized child was heard to remark as she and her mother left the courtroom after the conviction of her father for sexual abuse, "What do we do now?" The answer to that poignant question is unclear.

"Prosecution or the threat of prosecution is imperative for any changes to occur," remarks Karen Sellers, a director of an abuse center. "It forces them to face the dysfunction of the family roles and to confront the problem." The goal in addressing the sexually abusive parent depends on the community's attitude. "If the main purpose is for punishment, the task becomes easy. However, if we are attempting, as a short-term goal, to preserve the family, and as a long-term goal to break the cycle, the process becomes extremely convoluted," Sellers said.

What is the answer to the problem we now have the courage to face? First, we must recognize a sexually permissive society which lacks a humanistic, caring orientation contributes to the defective value system presently being developed in some individuals. Second, children must learn they as individuals have certain rights, one of which is to be left alone. Third, parents must protect their young from vulnerability through open and honest communications, and by addressing sexual dysfunction, if present within the family. Fourth, communities must support and encourage sex education in an atmosphere of human caring and commitment including not only facts on reproductive biology, but information on human sexuality and psychological and intra-family issues. Fifth, we all must recognize pedophilia is a very serious threat to our children and to ourselves as well. Community-based networks must be established to fully utilize skills and resources to protect the child from victimization and to return those who are victimized to a happy, healthy and productive childhood.

The price the individual and society pays relative to the long-range returns of sexual abuse is staggering. Boston University's Center for Law and Health Sciences reports sexual abuse is a predisposing condition to delinquency in some youth, an expression of rage at their maltreatment. In their survey of 150 adjudicated delinquents (99 boys and 51 girls), 66 percent had a history of severe physical and sexual abuse. The mean age of onset was seven years. Fifteen percent of the sexually abused youths, both male and female, were involved in prostitution.

Sexually abused children generally are denied a normal childhood. A significant result of sexual abuse is it arrests the emotional development of the young. Psychosexual maturation is greatly affected, which in turn sets into motion multitudes of factors which generally lead to maladaptive behavior. Such behavior may manifest itself through phobias, promiscuity, self-mutilation, drug dependency, depression, schizophrenia or even motor paralysis. Having experienced degradation in their youth, they may act out their learned behavior against their own children or against society in general.

Like the ripple effect of a pebble dropped in a pond, the sexual exploitation of a child spreads until it affects the whole community in some way. The child himself grows into adulthood and parenthood perpetuating the cycle, by being metamorphosed from abused to abuser. The child becomes tomorrow's delinquent or criminal. His potential and talent that could have been offered to the community are lost. The very vitality of his community is challenged when he is sexually maimed or destroyed.

Our human capital, as well as the simple dignity of man, is at stake. We must ask ourselves why we, as the lords of the animal kingdom, subject our young to sexual perversions while the lesser species take such meticulous care of their young. Children, in their innocence and unrestrained affections, deserve better. Our conspiracy of silence has become the ultimate crime of man — the ultimate betrayal. □

Prevention: A New Legislative Approach

by
Senator Gary Aldridge

Child abuse legislation has been commonplace in Alabama over the past two decades. The focus primarily has been on mandatory reporting legislation and defining appropriate criminal laws. Recently, however, the Alabama Legislature embarked on an innovative approach to the maltreatment of children — PREVENTION. Adoption of The Children's Trust Fund and the Child Abuse and Neglect Prevention Act (together designated "The Martin-Aldridge Act") is a significant statement of public policy for the protection of Alabama's children. Alabama has distinguished itself as a leader in the search for solutions to the most alarming societal problem in America.

In the 1983 Regular Session, two companion pieces of legislation were enacted to provide a tandem vehicle for the development of preventive programs. Act No. 83-735 establishes the funding mechanism for the creation of preventive programs by establishing The Children's Trust Fund. This fund is administered by the Child Abuse and Neglect Prevention Board, which is given broad implementation powers for establishing preventive programs by Act No. 83-736. The combined purposes the two acts are to provide for the planned establishment of local councils and prevention programs and to insure the necessary funding for these programs. This article will first

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discuss The Children's Trust Fund legislation and then purview the Child Abuse and Neglect Prevention Act.

The Children's Trust Fund

The Children's Trust Fund was created at a time when Alabama was in a grave financial posture. Revenue raising measures were being passed to allow the state to meet its most essential services. Clearly the revenues were not available to undertake a new program, irrespective of the need and merit of that program. Hence, the trust fund was established in a creative and innovative manner; it is funded from a voluntary check-off on the state income tax return. Beginning with the 1983 tax year, the Alabama taxpayer may designate $2 on an individual return and $4 on a joint return to be credited to The Children's Trust Fund. No state revenue will be used in the program.

The trust fund legislation targets ultimate accumulation of $10,000,000. Preventive programs will be funded from the earnings of the trust fund, with the principal remaining intact. However, until the $10,000,000 target is achieved, no more than 50 percent of the amount of the fund can be used for administrative expenses and funding of preventive programs.

The language of the trust fund act is sufficiently broad to allow the Child Abuse and Neglect Prevention Board considerable leeway in developing programs in conjunction with the local councils. Essentially, the funds are to be used to provide education and information; to create public awareness regarding child abuse and neglect; to encourage professional persons and groups to recognize and deal with abuse and neglect; and to encourage the development of community preventive programs.

Child Abuse and Prevention Act

Act No. 83-736 establishes the state Child Abuse and Neglect Prevention Board as an autonomous agency of state government. The act provides that the commissioner of the state Department of Pensions and Security, the state mental health officer, the state health officer, the state superintendent of education and the director of public safety or their designees shall serve on the board. In addition, the governor is empowered to appoint one public member from each congressional district and two members from the state-at-large. From this group of public board members, the governor is entitled to appoint a chairperson.

> ***"Alabama has made great strides by passage of legislation that encourages and funds preventive programs at the local level."***

The board is required to develop a state plan for the distribution of the funds in The Children's Trust Fund. The act provides that the plan shall assure equal opportunity for the establishment of preventive programs in all geographic areas of the state. The board is further required to coordinate the establishment of local councils and prevention programs.

The act contemplates that local councils shall have the primary purpose for the development and facilitation of a collaborative community prevention program. A local council seeking funds from the state board must demonstrate an ability "to provide prevention program models and consultation organizations and communities regarding prevention program development and maintenance." In addition, the local council must provide matching funds or in-kind services of 50 percent of the amount of the trust fund money received. The local councils are provided the incentive and guidance to develop and implement preventive programs suitable for their geographic areas.

Examples of the preventive programs envisioned by the legislation have been developed and implemented by Parents and Children Together, Inc. (PACT) of Decatur, Alabama. PACT was established in 1978 and now utilizes more than 200 volunteers in implementing a series of preventive and treatment programs. Its three-tier school program is recognized as a national model. Third grade students receive classes on the prevention of sexual abuse. Fifth grade students are instructed on problem solving and handling peer pressure. A seventh grade program focuses on adolescent pregnancy prevention along with classes designed to promote interfamily relationships.

In addition to the instructional programs at the elementary and middle school level, PACT provides parenting classes for parents who have been identified as high-risk parents. Prenatal classes instruct the mother-to-be on labor, delivery and child development. Every new mother in Morgan County receives a visit from a PACT volunteer and is given information on child development. Recently, PACT initiated a program for children who take care of themselves because of working parents, emphasizing safety and instruction on self care. Also, PACT serves as a clearinghouse on all types of information relating to abuse, neglect and sexual exploitation of children.

PACT serves as a model for the local councils to be established under the Martin-Aldridge Act. With the ever-increasing attention being given to child abuse and neglect, emphasis on preventive programs will increase. Alabama has made great strides by passage of legislation that encourages and funds preventive programs at the local level.

Conclusion

As a matter of policy, Alabama now recognizes the need for a preventive approach to child abuse and neglect. The Children's Trust Fund Act and the Child Abuse and Neglect Prevention Act provide the funding and the structure to establish a network of local preventive programs, but much remains to be done. Public awareness of the check-off contribution is indispensable. Alabama has the opportunity to become a leader in effectively addressing a problem proving to be more widespread than previously imagined. ☐

Child Abuse and the Juvenile Courts

by
Judge Sandra H. Ross

The news that Alabamians are abusing and neglecting their children in record numbers has become hard to ignore. In Alabama, during fiscal year 1984, the Alabama Department of Pensions and Security (DPS) received 28,407 child abuse reports, a number approximately twenty percent higher than that reported in 1983.

Society currently is addressing the child abuse issue from the four perspectives of prevention, treatment of families, protection of children and prosecution of abusers. Of the four, the protection of children and the prosecution of their abusers most concern the attorneys and judges of this state.

While the inherent problems of the successful prosecution of child abusers are drawing considerable public attention, it is nevertheless a fact that a relatively small number of reported child abuse cases are suitable for prosecution in the adult criminal justice system. In the meantime, the juvenile courts of Alabama are addressing the problems of the children and family members in every abuse case deemed appropriate for any degree of court intervention. The caseloads of the juvenile courts have become heavier with the increase in reported abuse. Many attorneys, often court-appointed and without experience in dealing with the juvenile system and families in general, are entering the field. There is a need for Alabama attorneys to become more familiar with the unique procedure and law of the juvenile court system.

Pursuant to §12-15-30(1) *Ala. Code* 1975, the juvenile courts of Alabama have exclusive original jurisdiction over proceedings involving dependent children, those who are abused, neglected or in other ways dependent upon the state for their care or supervision.

Once an abuse report is made to DPS, through mandatory reporting as required by §26-14-1 *Ala. Code* 1975, or by any other means, the agency is required to investigate to determine if court intervention is necessary. If it is determined the welfare of the child requires the court to be involved, then a complaint is filed with the court's juvenile intake officer who, in turn, may file a petition alleging the child in question is dependent and in need of the care or supervision of the court. This petition may be signed by anyone having knowledge of the facts, but is often signed by a representative of DPS, thereby making that agency a party to the case. After the petition is filed, the intake officer must issue a summons to the child to appear, if he or she is 12 or more years of age, and to the parents, guardian or custodian of the child. The summons must be served on a party at least 24 hours before a hearing, but the inability to serve does not deprive the court of the right to proceed. Rule 13, *Alabama Rules of Juvenile Procedure*.

At the time the petition is filed, the juvenile judge may issue a protective pick-up order for the child without notice to the parties, if it is determined from the available information the child should be immediately removed from his environment. This pick-up order may be endorsed on the summons or may be entered by separate order before service of the summons. If a child is removed from his residence and placed in the custody of DPS prior to a hearing, then the court must conduct a shelter care hearing within 72 hours of the child's removal, weekends and holidays included, to determine if continued care is required. §12-15-60(a). Parents, guardians or custodians must be notified of the date, time and place of the hearing, as well as of their right to counsel. If parents are found to be indigent, the court then must appoint counsel to represent them at this and all stages of the proceedings. The court also must appoint an attorney to serve as guardian ad litem for the child. §12-15-63(b). All relevant evidence is admissible at a shelter care hearing whether or not competent at a hearing on the merits of the petition. §12-15-60(d).

The law strongly favors the release of children to their parents and directs courts to return them unless one of the following situations is proved by clear and convincing evidence at the shelter care hearing:

1. The child has no suitable parent, guardian or other suitable person able and willing to provide supervision and care for the child, or
2. The release of the child would present a serious threat of substantial harm to such child. §12-15-59.

From the time of the first report to DPS of abuse or neglect until such time as they are relieved of supervision in a case, the agency is charged with investigation of the allegations before the court and with supervision of the parties to determine if court-ordered treatment is being followed. Attorneys representing parents and children should recognize the findings and recommendations of the DPS caseworkers are critical in many cases as they provide for the court an impartial picture of the child's circumstances. DPS predisposition reports are admissible at shelter care hearings and, pursuant to §12-15-69(a), the court may direct such a study and report be made for use at a hearing on the merits of the petition.

Juvenile dependency hearings are conducted in two phases, the first being a hearing on the allegations of the petition and the second being dispositional in nature once the court has found a child to be dependent and in need of the care of the court. At the trial of the merits, the allegations must be proved by clear and convincing evidence, competent and material and relevant in nature. §12-15-65(e). This burden seems to preclude admission of predispositional studies at the hearing on the merits of hearsay grounds unless one of the following exceptions applies:

1. The reports were prepared at the direction of the trial court;
2. The author of the report is available at the hearing for purposes of cross-examination; or
3. There is testimony presented in court corroborating the information in the reports. *Hamilton v. State*, 410 So.2d 64 (Ala.Civ.App. 1982).

If a child is found to be dependent, a second hearing is held to determine disposition of the case. At the disposition hearing, all relevant and material evidence helpful in determining the question presented, including oral and written reports, may be received into evidence even though not competent at a hearing on the petition. In *Kelly v. State Department of Pensions and Security*, 366 So.2d 736 (Ala.Civ.App. 1979), the court stated hearsay in DPS reports is admissible at a disposition hearing, noting in that case all reports were furnished to opposing counsel in advance of the hearing and the author of the report was present in court.

After hearing all pertinent evidence at disposition, the court may order one of the following alternatives for the child as set out in §12-15-71:

1. The child remain with parents, guardian or custodian subject to certain terms such as a requirement that the family enter counseling or attend parent effectiveness classes;
2. The child remain with parents, guardian or custodian under protective supervision of court probation staff or of DPS; or
3. Legal custody of the child be transferred to DPS or other local public child-placing agency or private organization licensed by DPS, or to a relative or other person recommended by DPS as being fit and proper.

All of the above listed alternatives require court review, which means a dependency case may involve attorneys and parties for months or even years. For instance, if the court transfers temporary custody of a child to DPS, then that child generally is placed in foster care until he can be reunited with his family or until parental rights are terminated and the child placed for adoption. In Alabama, the average length of stay for a child in foster care is now 2.3 years, and administrative rules of DPS and recommended court policy require court review of children in placement at least every six months.

Appeals from juvenile court orders, whether entered by district or circuit court judges, are made to the court of civil appeals and written notice of appeal must be filed within fourteen days of the entry of the order, judgment or decree. Rule 28, *Alabama Rules of Juvenile Procedure*. Attorneys should note Rule 20 requires the court to keep a complete record of all testimony by stenographic reporting or by mechanical device, such as recorders, which may be used for purpose of appeal.

In conclusion, each child abuse case reported and brought to the juvenile court for intervention may require as many as three or more attorneys before final disposition. As the number of dependency cases grows, so does the need for attorneys who are familiar with the law and procedure applicable to juvenile courts and who have adequate skills in dealing with children, parents and mental health professionals in order to solve complex family problems. The greatest contribution the legal system can make in the area of child abuse is to provide competent legal representatives for the parties involved. The quality of representation in a dependency case may often be determinative of the quality of life of the child whose best interests the courts are dedicated to serve. ☐

Jefferson County District Judge Sandra H. Ross is a 1978 admittee to the Alabama State Bar. She graduated, cum laude, from Cumberland School of Law. In addition to serving as a district judge, she also is on special assignment to the Equity Court, domestic relations.

The DA as a Mobilizer

by
District Attorney
Robert E. Cramer, Jr.

Our nation currently is experiencing an "epidemic" number of reports of child sexual abuse. Studies (which vary) indicate one in ten men and one in five women have been sexually abused as children. It is accepted widely the reported cases reflect only a fraction of the actual number of cases.

Few communities have child sexual abuse "intervention" programs. Cases of child sexual abuse are reported to child protective service agencies, law enforcement agencies, prosecutors, therapists, physicians, ministers and counselors. Physicians, nurses, teachers and other professionals coming into contact with children who may have been abused are confused about the process for reporting and the follow-up on reported cases of child sexual abuse. Consistent agency action and interagency referral have been hampered by the fact agencies and professionals often do not communicate, much less cooperate, in their efforts to provide service for victims of child sexual abuse. Many agencies see themselves in role conflicts with other agencies. For example, a Department of Pensions and Security protective service worker may be interested in reuniting a female incest victim with her family, while a prosecutor may want to file criminal charges against her father. As a result, without effective coordinated help, many children continue to be abused, having the quality of their entire lives affected, suffering lasting emotional injury and sometimes becoming abusers themselves.

The following scenario for child sexual abuse investigation is probably enacted on a daily basis in every state in the United States:

A child confides to some trusted person outside the family (perhaps a teacher) he or she is being sexually abused by a parent. The teacher reports the case to the County Department of Pensions and Security protective service worker or to law enforcement. The child is interviewed by each agency. An intake worker from the local child protective service agency visits the home and confronts the parent with the child's complaint of sexual abuse. A law enforcement representative and/or protective service worker will interview the offender and any other witnesses. The child protective service workers normally will refer the child to a physician for a medical exam and will likely recommend a therapist for the child and family. This, of course, requires the child and family to endure additional interviews.

Police and child protective service investigators find it difficult or virtually impossible to obtain comprehensive medical and psychological evaluations for victims, perpetrators and their families. Treatment resources are limited. Often, the protective service worker will seek a court petition to change custody of the child-victim. This involves the child as a potential witness in this custody petition and will require an attorney to be appointed to represent the child (guardian ad litem). Again, the child and family have to interact with additional "strangers" to be interviewed concerning the reported child sexual abuse.

Needless to say, not many children and families can "survive" the process in the outlined scenario. Add to that the fact that members of the disciplines involved lack basic understanding about the phenomenon of child sexual abuse and refuse to accept responsibility to increase their knowledge or skills. Without a coordinated community agency approach to reported cases of child sexual abuse, many offenders will escape proper scrutiny because the victims are not able to survive the system. Consequently, the community must unite and react together in these cases.

In Madison County, Alabama, reports of child sexual abuse began to increase rapidly in 1981. When elected district attorney in 1981, I had established a system to review reported cases of child abuse for possible criminal prosecution. Between the years 1973 and 1975, I was an assistant district attorney and was assigned to Juvenile Court. As a consequence, I was required to work with representatives from the Madison County Department of Pensions and Security protective service workers who were involved in removing children from parents because of child abuse and neglect. Because of this experience, when elected district attorney, I set up review meetings with DPS protective service workers. Every month, representatives from my office met with the protective service workers to review specific cases of child abuse. At these sessions, we were able to advise the protective service workers about courtroom testimony, the elements of criminal offenses, proper documentation and when to refer to law enforcement.

During 1981, we began reviewing child sexual abuse cases. Suddenly, we were faced with an overwhelming increase of such cases. After a year, we found 25-40% of the abuse cases reviewed involved child sexual abuse. Alarmingly, over the next few years, most of the abuse reviewed was child sexual abuse. Law enforcement was added to this team review in 1983. Also in 1983, the team review sessions were increased and now are conducted twice monthly. Presently, during our review sessions, the team decides whether a case is to be referred for criminal prosecution, for therapy or for further development and follow-up review. Specialized forms are used for this review allowing each agency to detail all follow-up procedures.

As a parallel to the prosecution/DPS/law enforcement team review, our community formed a Child Sexual Abuse Task Force in 1983. Because of the alarming number of child sexual abuse cases reviewed at the team review meetings, we felt a need to alert and inform other professionals and agency representatives about what was occurring in their community. Representatives from DPS and my office appeared before our county child abuse prevention coalition called SCAN (Stop Child Abuse and Neglect) which had existed in the community for almost ten years. We informed the SCAN board of directors of the alarming number of child sexual abuse cases in the community. We cited the need for other professional involvement particularly from the treatment and medical communities. We also emphasized many others, such as teachers, nurses, daycare workers and private schools, will be exposed to more and more cases of child sexual abuse. This would require additional community education programs to teach them about the subject matter. Together, we formed the Child Sexual Abuse Task Force.

The task force included representatives from medical, treatment, nursing, education, prosecution, protective service and law enforcement facilities, and daycare and community agency representatives and volunteers. The task force met at least twice a month and initially was broken down into subcommittees that included: treatment, intervention, identification and prevention. Each subcommittee came up with different goals and recommendations. For instance, the Intervention Subcommittee developed as its goals a manual on child sexual abuse to be distributed to teachers, nurses and others, and a proposed symposium or workshop on child sexual abuse.

The primary importance of the task force was to bring agency representatives together to discuss a problem they had in common. Most agencies and representatives in the task force had "hands-on" involvement in reported cases of child sexual abuse. However, many did not know one another. The DPS protective service workers often were referring children and families to therapy without knowledge of the philosophy of the treatment therapist. Many agencies were unfamiliar with the process of criminal prosecution and were reluctant to report cases for criminal prosecution because of the effect such would have on the family. The task force meetings and projects allowed professionals to discuss their common problems with one another. It brought the professional community closer together and closed many loopholes previously existing. However, there were many awkward moments as the task force developed. At certain times, the task force ended up taking positions conflicting with agency policies. Some participants felt "threatened" by policy and goal development of the task force, but the agencies most affected by the processes involved in reported cases of child sexual abuse continued to work together in the task force.

In August 1984, the Intervention Committee of the task force proposed a program for the community called the Children's Advocacy Center. During the August meeting of the task force, I narrated a "reenactment" of an actual case of child sexual abuse. This case involved a 12-year-old girl who had disclosed to her grandmother she had been sexually abused by her stepfather and father for as long as she could remember. The grandmother sat up all night with the child and heard the "dreaded" story. The following day the grandmother went to the police department and thereafter was "bounced" from agency to agency. The child was

Robert E. Cramer, Jr., graduate from the University of Alabama Law School in 1972. He was elected Madison County district attorney in 1980 and helped organize the Children's Advocacy Center (formerly the Child Sexual Abuse Task Force) in 1983.

interviewed by the police department, DPS protective service and emergency room hospital personnel. She was referred to therapy, and a guardian ad litem was appointed for her in the removal of custody from her mother. She was then referred to the district attorney's office for review for criminal prosecution.

This case illustrated the worst approach community agencies could take to child sexual abuse. The child told her story to the grandmother and to the DPS worker, but would not repeat her story to any other professionals. The stepfather confessed his guilt to others in the community, and the case was in a posture for criminal prosecution, but this could not be accomplished without the child's telling her story in court. This was a 15-month ordeal from start to finish, ending with successful prosecution of the stepfather. This case experience illustrated policies that could not continue if children are to be encouraged to come into the criminal justice system.

In early August 1984, two attorneys from my office and I went to Los Angeles, California, to interview two young boys who were sexual abuse victims. While in Los Angeles, we visited the Ventura County, California, district attorney's office to look at their Child Sexual Assault Unit. Also, we visited the Children's Institute in Los Angeles. The Children's Institute is a private foundation, 88 years old, which most recently has been involved with interviewing the children who were sexually abused at the Manhattan Beach Daycare Center. It was after this visit that we proposed to the community task force the formation of the Children's Advocacy Center.

The Children's Advocacy Center is a "program" with a focus on an advanced team approach to reported cases of child sexual abuse. The objective is to demonstrate a unique and successful community approach to interagency management of child sexual abuse reports. The overall goal of the project is to consolidate agency and professional involvement in addressing the problem of child sexual abuse. This will be accomplished by allowing relevant community agencies to work together through the program based in the Children's Advocacy Center.

A prosecution/protective service/law enforcement team will review all reports of child sexual abuse. The team will be based in a homelike "house" called the Children's Advocacy Center. From this base, the team will coordinate the handling of cases. The center's program will be the umbrella program under which community agencies will implement a model team approach.

The prosecution/law enforcement/protective service team will jointly investigate reports of child sexual abuse and will make referrals for therapy and medical exams. It is proposed that therapy sessions and medical exams will be initiated or take place at the center. Thereafter, all relevant agencies or other professionals involved with the child-victim and family can participate with them at the center to help make decisions in the best interest of the child, family and society. A victim-witness clerk from the district attorney's office will be available at the center to introduce the child and family to the criminal justice system.

> ***"Most often, the dilemma facing a district attorney's office is that the child-victims, some as young as three or four, are often the only witnesses to the crime."***

The program staff will develop interview teams and will conduct the interviews of the child-victim. Child-victims will no longer be interviewed at police departments, DPS offices or prosecution offices. All participating agencies will refer child-victims to the center. Team interviewers will question the children in the home-like surroundings, and, where appropriate, the interview will be videotaped. The confidentiality of the video will be preserved by center policy. Review for criminal prosecution will be done at the center. This will be done by the prosecutor/law enforcement/protective service team. If the child needs to be reinterviewed, that will be performed by the initial interview team at the center. The center will keep statistics on the number of child sexual abuse victims served, agencies participating, services provided, victim and offender profile and the number of offenders prosecuted and case disposition.

When a case is not referred for criminal prosecution, the team will attempt to stabilize the child and family. They will make referrals appropriate to maintain the safety and well-being of the child-victim. The team may recommend criminal prosecution be suspended as long as the offender is kept out of the child-victim's home and presence. DPS protective service will monitor the child and family and preserve the child's safety and well-being. Periodic team reviews may be conducted, and additional agency personnel will be involved. Additional team review may involve the team with DPS protective service and possible removal of the child from the family and offender. Close coordination will occur between the team and the agency seeking a court petition and order to remove the child from the custody of the family. The team will monitor the court proceeding and will make recommendations in the best interest of the child and family.

Each team member will act as his agency liaison, and follow-up or additional personnel involvement through that agency will be coordinated through the team agency representative. In most cases, DPS will use existing personnel to supervise cases initially developed through its team member and other personnel at the center. This will allow additional personnel from each agency to participate in the program.

At the conclusion of 12 months, the the staff involved in the program will recommend detailed interagency policy approaches in the handling of reported cases of child sexual abuse. The program will allow agencies to evaluate the benefit to the child-victim and family from a coordinated interagency approach.

Madison County professionals have

recognized the interviewing process and techniques are critical in cases of child sexual abuse. Another primary benefit of the program will be the further development of such techniques, processes and follow-up. Proper interviewing of a child-victim can be therapeutic. The center's staff and other agency participants will become specialized in this process. The participants in the program will develop a videotape interview guide which will stress a community approach to child sexual abuse. This interview guide will be available at the conclusion of the program.

Local and national publicity about child sexual abuse has prompted more parents to bring suspected cases before our community professionals. Most often, the dilemma facing a district attorney's office is that the child-victims, some as young as three or four, are often the only witnesses to the crime. Preparing a child to testify in court is one of the most difficult things for any prosecutor. The criminal justice system was designed for adults. It is a system that expects victims to undergo numerous interviews and court appearances, that expects testimony to be articulate and detailed and in which cross-examination often confuses the coolest adult.

The child in the courtroom poses new problems. Because the offenders often threaten harm to the child and family, sexually abused children may not report incidents for months or years later. Chances for corroborating evidence or effective prosecution are therefore affected. These are the toughest cases in the criminal justice system. Very rarely do they find successful solution; many cases reported to police and protective service never make it far through the criminal justice system.

The first cases we took into the criminal justice system taught us many adults would like to believe children make up these things. Adults do not want to confront the awful fact many parents will sexually abuse their children. Also, we, as a society, do not like to believe we would be willing to send an adult to prison on the testimony of a very young child. At heart, we really do not trust children.

However, experts in our community now believe children are more credible witnesses than adults, especially when it comes to sexual abuse. Young children do not lie about sexual abuse because it is not within their realm of experience. Children can be effective witnesses if they are adequately prepared. If law enforcement and community professionals show a little sensitivity, children can move through the criminal justice system with a minimum of stress.

We are developing model legislation calling for the abolition of competency hearings and allowing videotaping of a child's testimony, rules of evidence allowing for hearsay and expert witnesses and background checks for people who work near or with children.

How to begin a community approach to child sexual abuse? Law enforcement, prosecution, protective service and other professional people in the community who have direct contact with cases have to be willing to stick out their necks. They need to begin to review their cases together on a regular basis, and invite other disciplines to join them. Agencies need to permit a small number of interested staff to concentrate their case experience. As cases are reviewed by these "hands-on" people, interagency cooperation will improve. It will not happen overnight, but it will happen. Critical review is essential to improving case management. Professionals also have the responsibility to design and participate in education programs aimed at increasing their knowledge about the problem of child sexual abuse and improving their intervention skills.

Our children are our hidden assets; it is time we stand up for them. ☐

Child Sexual Abuse will be the topic of a symposium February 20-22, 1985, in Huntsville. Sponsored by the Child Advocacy Unit of the Madison County district attorney's office, the workshops are targeted for physicians, legislators, judges, educators, therapists and any others involved with and concerned about this ever-growing problem.

For more information, please contact Ms. Leigh Johnson, coordinator, (205) 532-3460.

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The Justice System and Sexual Abuse of Children

Jon R. Conte
University of Chicago

One of the most controversial issues dividing professionals working with sexually abused children is the role of the justice system in responding to these cases. From a social work perspective, this controversy is fueled in part by misconceptions about the problem of sexual abuse of children. This article takes a critical look at common beliefs about sexual abuse of children, and discusses the initial treatment needs of these cases and how the justice system can be helpful in meeting these needs.*

One of the most controversial issues among professionals working with sexually abused children concerns the justice system's response to sexually abused children and the adults who abuse them. This issue is so controversial that Kee MacFarlane and Josephine Bulkley, in their analysis of program types in the field, suggest that all programs may be characterized by their attitudes toward cooperation with the justice system.[1] Unfortunately, the controversy over the role of the justice system is clouded by great variation in judicial policies and practices in different jurisdictions around the country, making it impossible to describe a single justice system response to these cases. Additionally, the justice system consists of both criminal and civil processes that both differ from each other, and across jurisdictions. Perhaps most significantly, there is a virtual lack of research findings informing the controversy surrounding the justice system and sexual abuse of children.

The argument against involving the justice system in cases of sexual abuse of children is based on a number of factors. Often mental health

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and social service personnel express concern that the involvement of the justice system is traumatic to sexually abused children (e.g., when justice system personnel repeatedly interview victims about their abuse), or that the justice system inevitably breaks families apart, which itself may traumatize victims. Many human service personnel also tend to view justice system involvement in these cases as being synonymous with punishment. Punishing a mental health problem is regarded as inhumane and ineffective for the perpetrator, and as potentially traumatizing to the victim, who often feels a sense of responsibility that an adult she may care for is incarcerated because of her testimony. Those who argue against the justice system assuming a role in child sexual abuse cases frequently take this position when discussing incest cases, but not in cases where a stranger sexually assaults children.

In large part, many of the factors that support the anti-justice system position appear to lack empirical support. This paper takes a critical look at the controversy surrounding the role of the justice system in child sexual abuse and outlines an argument that examines how many mental health and social service personnel have come to view the role of the justice system in responding to sexual abuse of children. In accomplishing this goal, the paper will devote considerable space to a discussion of how many social welfare professionals have tended to view the problem of child sexual abuse. The remainder of the paper will discuss the major initial clinical needs of these cases and ways in which the justice system may be a partial response to these needs.

Dynamics of Sexual Abuse

Professional understanding of the problems of sexually abused children partly rests on certain factors that are often referred to as the "dynamics of sexual abuse." These include the following:

Demographics

Although estimates vary widely, and an accurate picture of the incidence of sexual use of children is methodologically very difficult to obtain, most human service professionals now recognize that the problem affects large numbers of children. David Finkelhor estimates that one in five girls and one in eleven boys are sexually abused before their eighteenth birthday.[2] In a recent study involving a random survey of 900 homes in San Francisco, Diana Russell reports that 38 percent of the adult women respondents reported that they had been the victims of body-on-body sexual abuse before they had turned eighteen.[3]

Although percentages vary slightly by sample, strangers are the perpetrators of sexual abuse of children in only 8–10 percent of cases. Approximately 47 percent of the perpetrators are members of the child's own family, and about 42 percent are known by the child or the child's family, but not a family member. Nearly 85 percent of the victims are female, although an increasing number of male children are being reported. Sixty percent of victims are under twelve years of age, and victims appear in all socioeconomic conditions.[4]

In most cases, except those involving abuse by a stranger, the perpetrator involves children in sexual abuse through a grooming process in which a combination of kindness, attention, material enticement, special privilege, and coercion are expertly applied.[5] Depending on the particular sample of perpetrators or victims being described, the use or threat of force will vary. For example, Jon Conte and Lucy Berliner indicated that force was threatened in 16 percent, and actually applied in 22 percent, of the cases in their Seattle sample.[6] Carl Rogers and Joyce Thomas report that in the urban setting of Washington, D.C., physical force is employed in 50 percent and threatened in 40 percent of cases.[7] Forty-one percent of the adults victimized as children in the Russell study report the involvement of force.[8]

Secrecy

Sexual abuse of children cannot take place without secrecy. The overwhelming majority of adults who sexually use children are sane and understand the illegal nature of their behavior. Although perpetrators develop elaborate rationalizations for their behavior (e.g., "I was only teaching her about sex"), they know it is wrong and go to great lengths to keep the victim silent. Some perpetrators will threaten the victim with physical harm, while others will threaten to harm members of the child's family if the victim reveals their secret. Some perpetrators will tell a child who is concerned about her mother and her mother's reaction that "If you tell your mother, it will kill her." Other offenders who have otherwise positive and ongoing relationships with their victims will tell the child, "If you tell, I will go to jail." Adults who sexually use children become adept at identifying the variables that are important to a child and use these to manipulate the child into an abusive relationship in which the child keeps silent about the abuse.

Except in those few cases of assault by a stranger, the child usually has some kind of ongoing relationship with the offender. Victim-offender relationships vary, as do all adult and child relationships. In some of these relationships many, or indeed most, aspects of the relationship may be positive. In others, a few or some aspects of the relationship may be positive, or there may be no positive qualities at all. While virtually all children want the sexual behavior to stop, many will still have positive feelings for the offender. This ambivalence on access to and potential control over his victim is greater because of their close living contact and the nature of the parent-child relationship, in some ways the incestuous offender represents a greater "danger" to his victim. "Dangerousness" is also a vague concept. When used in this context it should describe not only the potential to expose the child to physical force to gain access to her sexually, but also to use psychological coercion and manipulation in the process of victimizing her, to betray normal parent-child relationships that are a major source of the development of healthy human beings, and to expose the child to the potential negative effects associated with being a sexual abuse victim.

Both of these major clinical beliefs about incest are largely unsubstantiated. For example, the belief that incest is primarily the sexual expression of nonsexual needs sounds clinically significant until one realizes that virtually all sexual activity is in part an expression of nonsexual needs. Needs for closeness, physical contact, and physical comforts, as well as feelings of hostility, are routinely expressed through sexual contact. It has long been maintained by those involved with adult rape victims that rape is a crime of violence, not sex. Indeed, Abel and colleagues have demonstrated that there is a relationship between the number of violent rapes committed and the degree of arousal to violence, rather than consenting sex.[11] The issue is that the sexual arousal is to violence, not that there is no arousal. Incestuous sexual behavior is not unique in combining sexual and nonsexual dimensions.

Representive data are lacking to support the belief that incestuous fathers or stepfathers do not involve children outside their own homes in sexual behavior. There is, however, some evidence to suggest that the pattern of sexual contacts between incestuous fathers or stepfathers and their sexual partners is quite varied. Some men may have exclusive or multiple sexual relations with their daughters or sons, children outside their homes, and their wives. For example, Josiassen, Fantuzzo, and Rosen report that a thirty-seven-year-old man had pedophilic experiences during a time that he also had sexual relations with his wife.[12] Marshall reports that a thirty-three-year-old male, arrested for sexually abusing a thirteen-year-old neighbor girl, had sexual intercourse with his wife approximately three times a week during the six-year period that he abused approximately twenty-five young girls.[13] More telling in this regard are recent data reported by Abel on 142 men referred for treatment because they had sexually abused their own daughters. After additional clinical assessments using physiological measures of arousal, 44 percent of the fathers and stepfathers admitted to abusing children outside their own homes.[14] There are fathers or stepfathers who exclusively sexually abuse their own daughters, but it appears that there are also many fathers or stepfathers who abuse both their own children and children outside their own homes. These patterns are complex, vary considerably, and may not depend solely on the relationship of the offender to his victim.

Recent data reported by Abel highlight both the importance of mental health professionals being aware of the possibility that incestuous fathers may have abused children outside their homes, and of the difficulty of traditional verbally mediated assessment procedures to determine their abuse patterns. Initial clinical interviews were validated in an experiment in which paraphiliacs were confronted with the results of four additional assessment strategies: (1) a paper-and-pencil card sort, (2) repeated clinical interviews, (3) results of a physiological measure of their sexual arousal to deviant sexual stimuli (e.g., small children), and (4) repeated clarification of the confidential nature of all their statements. Results for these assessment devices revealed that 56 percent of the subjects admitted to an additional ninety-two paraphiliac diagnoses. The percentages of new diagnoses uncovered by each of the assessment strategies are: confidentiality, 1 percent; card sort, 19 percent; reinterview, 20 percent; and arousal measure, 62 percent.[15]

The "dynamics of sexual abuse" suggest several major points:

1. There are currently few data to support the belief that all incestuous abusers abuse only their own children. The patterns of abusive contact exhibited by adults who have sex with children are often not known during the initial disclosure period. More important, as long as human service professionals assume that men referred for incest do not abuse children outside their own homes, disclosure of additional victims by incestuous fathers or stepfathers will not be encouraged. Consequently, the nature of the incestuous father's problem that places children at risk will not be identified.

2. Sexual abuse of children in most cases takes place within an ongoing victim-offender-family relationship. Secrecy, ambivalence, and differential power between children and adults are inherent aspects of sexual abuse. Professional responses to these cases should take these aspects into consideration in the process of designing intervention. Some means of changing the situation in which secrecy, ambivalence, and differential power maintain the abuse should be an initial treatment goal. This goal often requires that adults outside the victim-offender-family relationship assume responsibility for insuring that the abuse stops, that victims are not coerced into changing their stories, and that they do not have to choose between protecting themselves or the offender with whom they may have an ongoing relationship.

Although there are no studies of the handling of sexual abuse cases, many professionals recognize that mental health and social service responses to these cases in the past have failed to protect children by stopping the abuse or reducing the pressure on them to change their reports of the sexual abuse. Many of these professionals lack the inclination or the means to effectively and immediately intervene in the victim-offender relationship so as to protect the victim. The justice system, through either criminal or civil actions, has the means to intervene at the time of disclosure of the abuse so as to protect the child from pressure to change her story and, at least in part, to relieve her of the responsibility for protecting herself by making her protection the responsibility of the State.

3. Whatever other clinical dimensions may be present in sexual abuse cases, sexual abuse of children is a sexual problem. This problem appears to consist, in part, of sexual arousal to and deviant fantasies involving children as sexual partners. Many adults who have sex with children find their fantasies and arousal to children uncontrollable. Initial intervention should help these adults structure their lives so that their urges will not place children at risk for abuse, or the adult at risk for additionally criminal acts.

Clinical Needs of Sexual Abuse Cases

Stopping the Abuse

Children reveal their own victimization in a number of ways, including telling parents, peers, other adults, or professionals. The dramatically increasing number of identified victims apparently stems from adults allowing themselves to accept the fact that large numbers of children are victimized. Disclosure of sexual abuse rarely occurs through the voluntary actions of perpetrators. Very few adults involved in behavior that is sexually and psychologically reinforcing, as well as socially stigmatizing, voluntarily cease such behavior. Indeed, since most offenders develop elaborate rationalizations that allow them to deny the coercive and disruptive nature of their acts, the first clinical issue for both victim and offender in an effort to stop the abuse is acknowledging its occurrence. Additionally, since most sexual abuse of children involves multiple incidents carried out over a period of time, often with compulsive or uncontrollable urges by the offender, some significant action is necessary to disrupt the sequence of events that in the past have supported or allowed the abuse to take place. From a mental health perspective, the purpose of this action is to protect the child and get the case into service.

In some cases, adult members of the child's family have the necessary psychological and material resources to take action to protect the child. In other families, adults lack either or both of these resources, and in a few families the adults may have known and consciously decided to allow the child's victimization. Which of these possibilities is an accurate description of a specific case situation should not be assumed a priori but should be the subject of initial assessment.

Many mental health and social service personnel that deal with intrafamily sexual abuse assume that the victim's mother unconsciously knew about and condoned her child's victimization. This clinical belief is particularly insidious since unconscious motivation is extremely difficult, if not impossible, to reliably measure; hence, its presence is difficult to confirm. It is very hard for adults to recognize that someone, often a loved one, is sexually involved with a child. In addition to this perceptual-psychological problem, the offender may be the sole or major financial support of the family, or the child's mother may be a psychologically weak and dependent person who is either unable to protect her child once the abuse is revealed or may require social service supports such as housing or income to help protect her child.

Once sexual abuse is disclosed, actions should be undertaken to protect the child, to disrupt the ongoing flow of events so as to help insure that re-abuse will not take place while the perpetrator is getting help to control his behavior (e.g., by limiting the perpetrator's contact with the child), and to provide whatever social services the family needs to insure protection of the child and meet other basic needs.

There are a number of ways that these initial goals may be achieved. In some jurisdictions the juvenile court may be an appropriate means to accomplish these ends. Unfortunately, most juvenile courts lack the power to influence the behavior of families except through the removal of the child from the home. Indeed, data from a 1978 national survey indicate that children are more likely to be removed from their home in cases of sexual abuse than physical abuse.[16]

In the majority of cases, removal of the child from the home at the point of disclosure of sexual abuse punishes the child by disrupting her life further, deprives her of the emotional support she needs most at the stressful time of disclosure, and can communicate to her that she is responsible for the sexual abuse. Many professionals oppose justice system involvement in these cases because of the guilt it may instill in the victim as she sees her family disrupted. Removal of the offender from the home rather than the child, and the provision of adequate social services to meet whatever needs the family has if the offender is removed, can help alleviate any guilt the victim may feel. Temporary removal of the offender until therapeutic efforts have had a chance to be successful is also a means of communicating to the offender his responsibility for the sexual abuse and helping him control his behavior until therapy may be successful in eliminating the problem.[17] Whether the offender's temporary removal from the home is accomplished through civil protection orders that bar the offender from having unsupervised contact with the victim or through arrest and adjudication in criminal court depends in large part on which is the most efficient and effective means of insuring that the offender is out of the home. In most cases offenders should be out of the home as long as the victim and nonoffending parent wish, and until there is clear evidence that therapy has been successful in reducing the likelihood that sexual abuse will recur.

Victim/Family Sensitivity

Another major clinical need of clients in sexual abuse cases involves preventing the initial period of investigation from serving as an additional source of traumatization to the victim. Insensitive handling of child sexual abuse cases by justice system personnel that may lead to system-induced trauma has been a major concern of professionals opposed to such involvement. Problematic aspects of the justice system have been described in great length and include: an attitude of disbelief on the part of justice system personnel that is communicated to the victim, thereby invalidating her experience; multiple interviews with various members of the justice system in which the child has to recount the details of her abuse; insensitive interviewers who lack interviewing skills and an understanding of the dynamics of sexual abuse and child development; and disruptions in the child's life resulting from trips to the state's attorney's office or visits by uniformed police to a child's classroom.[18]

While these occurrences may result in system-induced trauma, considerable innovations in many communities have either significantly reduced or completely eliminated the traumatic aspects of initial investigations. Some of these innovations include reducing the number of interviews by conducting joint police and state's attorney interviews, and training police and state's attorneys to be more effective and sensitive interviewers of children.[19] There have been virtually no evaluations of these various innovations demonstrating that they, in fact, do reduce trauma. Nonetheless, that such innovations have been implemented suggests that there are alternatives to insensitive handling of victims and adults involved in these cases. The careful use of these innovations, especially in conjunction with evaluation efforts, offers the potential for sensitive handling of these cases in every jurisdiction in the country.

Clinical Treatment of Perpetrators

Perhaps the greatest unmet need in cases involving adult sexual use of children is that of treatment for the perpetrator. While state intervention can be justified as a means to protect the child victim from the adult sex offender, little is accomplished beyond this if the offender does not receive treatment. Since many offenders abuse more than one child, offender treatment seems like a major means of preventing additional children from being victimized. Perhaps, more to the point, since about 90 percent of offenders are known to the victim and her family, it is not likely that all families will be supportive of justice system involvement in the absence of treatment for the offender.

It should be noted that there is not universal agreement that offenders should be treated at all. Punishment for sexual crimes against children has been suggested, as has castration and other more radical responses. While this is not the place to review the arguments for humane services designed to rehabilitate adults who sexually abuse children, it is assumed here that one of the goals of mental health and social service personnel is to provide those services that are likely to help the adult who sexually uses children so that he may live as a free person within society.

However, getting the adult sex offender to enter treatment requires substantial effort. Typically, adults who sexually use children develop elaborate and often complex rationalizations for their behavior. Upon disclosure, many indicate that they do not remember the events, either because of drinking too much or for some other reason.[20] Many offenders have so convinced themselves that their sexual contact with a child was initiated by and enjoyed by the child that they are unable to accurately perceive their victims' fearful and passive acceptance of or active resistance to the abuse. For these reasons, very few offenders voluntarily enter treatment. Other reasons include their fear of the presence of the justice system in their life, the uncertainty surrounding the eventual decisions of the offenders' family about remaining with the offender, and fear of psychological and personal growth or change.

Rather, what is necessary to get offenders into and to remain in treatment is a strong authority. In a few cases this authority may come from other family members. Often, however, it must come from someone outside the family. While some offenders appear to be motivated by the consequences of civil proceedings (e.g., removal of daughter or no contact with family), many other offenders require the authority of the criminal justice system.

Criminal justice interventions with adults who sexually abuse children need not, in most cases, result in incarceration of the offender. Many communities have developed alternatives to incarceration. Using either pretrial diversion or postconviction alternative therapeutic dispositions, offenders are able to receive the therapy they need.[21] Although the availability of such programs varies greatly by jurisdiction, in one study Conte and Berliner report that only 12 percent of prosecuted offenders in Seattle do prison time, and an additional 14 percent are sentenced to a sexual psychopath program at the state hospital. Most offenders remain in their home communities and receive counseling as a condition for probation.[22]

Clearly such arrangements require an active and specialized treatment program. Social service and mental health personnel are in an excellent position to advocate for the establishment of these programs and to create innovative program models. Pretrial diversion and alternative disposition programs are appealing for several reasons. Not only do they allow the offender to maintain many normal aspects of his life, such as work, but they also avoid the high costs of incarceration. The offender's presence in the community also makes him available for therapeutic efforts designed to reunite the family, if this is what the family desires.

An argument often given for not involving cases in the justice system is that it is impossible to force a client to change. As this argument goes, coercion works against the development of the therapeutic alliance; it is impossible to force clients to change their behavior, and the only meaningful change is that which is self-motivated. These views are at the basis of the belief that diversion programs, alternative disposition, or indeed any criminal justice system inspired motivation for entering treatment are irreconcilable with true therapeutic efforts. Consequently, clinicians who work with the justice system are seen as either antitherapeutic or outright unethical.[23]

At one level these attitudes are partially accurate. No therapeutic process can force change. A degree of motivation is necessary for change to occur regardless of the model of therapy employed. However, the point is that very few clients are completely self-motivated, and few enter therapy without some degree of coercion. The child who is brought to therapy by a family that blames his behavior for all their discord, the wife who accompanies a husband to marital counseling to talk about her lack of sexual interest when she finds herself in an unhappy marriage, or the abusive family who enters treatment because it is the only way to obtain the necessary social and financial supports to survive are all involuntary clients.

Assessment of and efforts to increase client motivation are an essential aspect of beginning work with all clients. Identifying and working with the client's own agenda for therapy is an essential aspect of the initial stage of therapy. These issues are not different in form or importance whether the client is an eight-year-old with school phobia, or an adult who sexually abuses children. There is an expanding literature describing clinical work with involuntary clients, and this concern for the impossibility of forcing clients into treatment need not be a roadblock to working with these cases.[24]

Conclusion

If we lived in a world where mental health and social service interventions were all-powerful and where adults who sexually use children voluntarily asked for help in stopping their behavior, use of the justice system in child sexual abuse cases would not be necessary. Since this is obviously not the case, the justice system can be a useful tool in treating sexual abuse of children. To date, there have been substantial efforts on the part of the justice system to make many of the changes that mental health and social service personnel have advocated, and that appear to make the justice system useful in getting cases into service. This is not to say that the justice system in all communities has implemented these innovations—they have not. In many communities throughout the United States there have been no efforts to train personnel or to alter procedures to insure more sensitive handling of these cases. Even in communities where there has been substantial innovation and improvement, from time to time individual cases are poorly handled. The continued monitoring of the management of child sexual abuse cases by law enforcement and justice system personnel is a necessary and inherent responsibility of mental health and social service professionals. Concomitantly, by ignoring or shunning the use of the justice system in these cases, social service and mental health services lose a potentially useful component in dealing with cases of sexual abuse of children.

Notes

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Children's Competency To Testify

Gary B. Melton*

Case law and relevant psychological research on children's competency to testify are reviewed. Memory in young children is not problematic if direct, simple questions are used. Children's difficulty in free recall, however, may make them more subject to leading questions. There is no pronounced developmental trend in honesty, and attempts on voir dire to assess honesty are probably invalid. Of most concern is young children's ability to form "just impression of the facts." Even children's limited conceptual skills may not be problematic, however, if jurors can discern the objective reality from the child's description, a point as yet unresearched. Research is also needed on the ways in which the courtroom setting affects a child's behavior.

While the age at which the presumption is set varies across jurisdictions,[1] there is generally a rebuttable presumption that children are incompetent to testify. Although recognizing that children may be less likely than adults to give reliable testimony, the courts have been reluctant to hold that, because of age, children below the designated age are per se incompetent to testify. Rather, the competency of child witnesses of any age must be established on a case-by-case determination of whether the child's testimony will enhance justice.[2]

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[1] In the majority of states, the rule for assessing competency of a child witness is established by case law alone. In those states where there is a statutory guideline, children under age 10 are presumed incompetent, and children above age 10 are presumed competent. Even in these states, however, with the exception of Arkansas, these presumptions are rebuttable (Siegel & Hurley, 1977). Courts have held children competent as young as 4 years old (Stafford, 1962).

[2] This principle is well established in case law. For reviews of the course of supporting cases, see Collins & Bond (1954), Note (1953), Siegel & Hurley (1977), Stafford (1962), and Thomas (1956). *See e.g.*, United States v. Perez, 526 F.2d 859(5th Cir. 1976); United States v. Schoenfield, 465 F.2d 560 (D.C. Cir. 1975), *cert. denied*, 409 U.S. 881 (1972).

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CASE LAW

This principle has been established in Anglo-American law since the 18th century.[3] The traditional view is reflected in the United States Supreme Court's 1895 decision in *Wheeler v. United States*.[4] In that case the Court held that the 5-year-old son of a murder victim was properly qualified as a witness:

> That the boy was not by reason of his youth, as a matter of law, absolutely disqualified as a witness, is clear. While no one would think of calling as a witness an infant only two or three years old, there is no precise age which determines the question of competency. This depends on the capacity and intelligence of the child, his appreciation of the difference between truth and falsehood, as well as of his duty to tell the former. The decision of this question rests primarily with the trial judge, who sees the proposed witness, notices his manner, his apparent possession or lack of intelligence, and may resort to any examination which will tend to disclose his capacity and intelligence as well as his understanding of the obligation of an oath.[5]

In determining a child's competency to testify, the courts have tended to place primary emphasis on the child's ability to differentiate truth from falsehood, to comprehend the duty to tell the truth, and to understand the consequences of not fulfilling this duty.[6] This inquiry has often followed a line of questions on voir dire directed toward ascertaining a child's religious and moral beliefs.[7] The child need not, however, understand the legal and religious nature of an oath.[8] Rather, it is sufficient that the child have a general understanding of the moral obligation to tell the truth.

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[3] Rex v. Brasier, 1 Leach 199, 168 Eng. Rep. 202 (1770). ". . . [T]hat an infant, though under age of seven years, may be sworn in a criminal prosecution, provided such infant appears, on strict examination by the Court, to possess a sufficient knowledge of the nature and consequences of an oath . . . for there is no precise or fixed rule as to the time within which infants are excluded from giving evidence; but their admissibility depends upon the sense and reason they entertain of the danger and impiety of falsehood, which is to be collected from their answers to questions propounded to them by the court; but if they are found incompetent to take an oath, their testimony cannot be received . . ." 1 Leach 199, 200, 168 Eng. Rep. 202, 203.

[4] 159 U.S. 523 (1895).

[5] *Id.* at 524–525.

[6] The voir dire in *Wheeler* was exemplary: "The boy . . . said among other things that he knew the difference between the truth and a lie; that if he told a lie the bad man would get him, and that he was going to tell the truth. When further asked what they would do with him in court if he told a lie, he replied they would put him in jail. He also said that his mother had told him that morning to 'tell no lie,' and in response to a question as to what the clerk said to him, when he held up his hand, he answered, 'don't you tell no story.' " *Id.* at 524.

[7] One commentator (Note, 1953) suggested a "typical group of questions": "What is your name? How old are you? Where do you live? Do you go to school? Do you go to Sunday School? Do you know what happens to anyone telling a lie? Do you know why you are here today? Would you tell a true story or a wrong story today? Suppose you told a wrong story, do you know what would happen? Do you know what an oath is? Did you ever hear of God?" (p. 362). A somewhat more recent commentator (Stafford, 1962) also suggested that an assessment of a child's competency should include "questions about his attendance at church or Sunday School, including his frequency of attendance, names of his teachers, pastor and location of his church" (p. 316). Besides raising a constitutional issue, these questions are probably of little probative value today in view of changing norms of church attendance. Regardless, from a cognitive-developmental perspective, such questions would shed little light on the child's ability to apply moral principles. Questions about church attendance are nonetheless still commonly used (Siegel & Hurley, 1977). *See, e.g.*, Brown v. United States, 388 A.2d 451, 458 (D.C. Mun. Ct. App. 1978).

[8] *See, e.g.*, State in Interest of R.R., 79 N.J. 97, 398 A.2d 76 (1979); State v. Manlove, 441 P.2d 229 (N.M., 1968); Posey v. United States, 41 A.2d 300 (D.C. Mun. Ct. App. 1945); State v. Collier, 23 Wn. 2d 678, 162 P.2d 267 (1945); People v. Delaney, 52 Cal. App. 765, 199 Pac. 896 (1921). Given that part of the

While necessary, adherence to the truth is not sufficient to establish competency. There is also a necessity that the child have cognitive skills adequate to comprehend the event he or she witnessed and to communicate memories of the event in response to questions at trial.[9] If a child's view of the truth bears little resemblance to reality, it will also have little value to the trier of fact. Thus, competency to testify implies some measure of competency at the time of the event witnessed as well as at the time of the trial.[10] The child must be able to organize the experience cognitively and to differentiate it from his or her other thoughts and fantasies.[11] Furthermore, the child must be able to maintain these skills under psychological stress and under pressure, real or perceived, from adult authority figures to shape his or her responses in a particular way. Thus, level of suggestibility is an important factor.[12] Particular kinds of testimony may require further specific competencies. Most notably, testimony by children on sexual abuse may require verification of the child's comprehension of the meaning of sexual terms and behavior.[13]

The implication of the discussion thus far is that assessment of a child's competency to testify may require a rather extensive and formal assessment of the child's cognitive, moral, and emotional capacities on voir dire. Given that time will be consumed in any event and that there is no litmus test for competency, Wigmore (1940,

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reason an oath is administered is to subject the witness to penalties of perjury if he or she lies, there has been some question whether young children (usually under age 7) could ever be competent because of their lack of potential criminal liability under common law and, in some states, by statute. Such a view seems overly narrow, particularly given that the oath itself (and the threat of punishment, whether divine or secular, for lack of adherence to it) probably has little effect on behavior. In fact, the argument of a necessity of potential liability for perjury has generally not been sustained (Stafford, 1962).

[9] "A child is competent to testify if it possesses the capacity to observe events, to recollect and communicate them, and has the ability to understand questions and to frame and make intelligent answers, with a consciousness of the duty to speak the truth." Cross v. Commonwealth, 195 Va. 62, 64, 77 S.E. 2d 447, 449 (1953).

[10] The standard for competency as a witness at the event itself may be lower than the standard for competency to testify. Courts have occasionally ruled children competent who were found to be incompetent at earlier trials. Apparently the courts assumed the earlier deficit was in their capacity to recollect and communicate their impressions rather than in their capacity to observe, encode, and conceptualize their experiences. Cross v. Commonwealth, *supra;* Burnham v. Chicago G.W.R.R., 340 Mo. 25, 100 S.W.2d 858 (1937) (child found incompetent in prior trial allowed to testify after dream supposedly refreshed memory). It is noteworthy that these courts apparently assumed a sequence of psychological development which is reversed in reality. *See* discussions of memory and cognitive development *infra.*

[11] The child must have been able to form "just impression of the facts." "There is the danger that a child will intermingle imagination with memory and thus have incorrect statements irretrievably engraved on the record by a guileless witness with no conception that they are incorrect or that the words should not have been spoken." (Stafford, 1962, p. 309)

[12] People v. Delaney, *supra;* Macale v. Lynch, 110 Wash. 444, 188 Pac. 517 (1920). Suggestibility is a particularly important issue when the defendants are parents or other significant adults in the child's life. *See* Gelhaar v. State, 41 Wisc. 2d 230, 163 N.W. 2d 609 (1969); State v. Hunt, 2 Ariz. App. 6, 406 P.2d 208 (1965); Benedek & Benedek (1979); Siegel & Hurley (1977).

[13] Riggs v. State, 235 Ind. 499, 135 N.E.2d 247 (1956). In that case, the trial court erred in not seeking such validation of testimony of a 12-year-old girl who was asked simply, "Did you have sexual intercourse with Hiram Riggs?" She answered affirmatively without any additional details. No evidence was presented of the girl's understanding of "sexual intercourse." *See also* Fitzgerald v. United States, 412 A.2d 1 (D.C., 1980) (jury instruction on corroboration of minors' allegations required in sex-offense cases).

§509) has recommended abolition of the requirement that a child's competency be established before he or she can testify. He would have the trier of fact simply evaluate a child's testimony in context, just as any witness's testimony must be examined for its credibility:

> A rational view of the peculiarities of child-nature, and of the daily course of justice in our courts, must lead to the conclusion that the effort to measure a priori the degrees of trustworthiness in children's statements, and to distinguish the point at which they cease to be totally incredible and acquire some degree of credibility, is futile and unprofitable . . . . Recognizing on the one hand the childish disposition to weave romances and to treat imagination for verity, and on the other the rooted ingenuousness of children and their tendency to speak straightforwardly what is in their minds, it must be concluded that the sensible way is to put the child upon the stand and let the story come out for what it may be worth. (p. 601)

Wigmore's view has not been adopted by any American jurisdiction. Consequently, it is useful to examine psychological research which may be helpful to courts faced with assessing the value of children's testimony.

PSYCHOLOGICAL RESEARCH

Memory

There has been little research directly related to children's behavior on tasks like courtroom testimony. The most germane study was a recent investigation comparing children's and adults' performance on eyewitness tasks (Marin, Holmes, Guth, & Kovac, 1979). In that study, students aged 5 to 22 were placed in a situation in which a confederate of the experimenter interrupted a session to complain angrily about the experimenter's using a room supposedly already scheduled. Subjects were questioned about the incident after a brief interval (10–30 minutes) and after two weeks. Memory was assessed using free recall, objective questions (including one leading question), and photo identification. Older subjects were superior only on the free narrative task. Older subjects produced much more material on free recall (mean number of descriptive statements: kindergarten and first grade, 1.42; third and fourth grades, 3.75; seventh and eighth grades, 6.50; college students, 8.25). However, the youngest subjects were significantly more likely to recall correctly those items which they did produce (only 3% incorrect). Marin et al. suggested that the results supported the use even of young children as witnesses in court, particularly given that the objective questions task most closely paralleled the trial situation:

> This additional finding [of accuracy on free recall] lends . . . further support to the conclusion that even very young children can be credible eyewitnesses, particularly when combined with the other findings that children are as capable as adults of answering direct objective questions and are no more easily swayed into incorrect answers by leading questions. It appears that children are no more likely than are adults to fabricate incorrect responses, and that when their testimony is elicited through the use of appropriate cues, it is no less credible than that of adults. (p. 304)

Marin et al.'s findings were consistent with earlier laboratory studies suggesting that children as young as age 4 or 5 perform as well as adults on recognition memory tasks (Brown, 1973; Brown & Campione, 1972; Brown & Scott, 1971; Corsini, Jacobus, & Leonard, 1969; Nelson, 1971; Perlmutter & Myers, 1974, 1975, 1976;

Standing, Conezio, & Haher, 1970) but that there are marked developmental trends in free recall ability. The latter trends appear related to developmental differences in retrieval strategy. That is, young children require direct cues, such as specific, direct questions, to stimulate recall (Emmerich & Ackerman, 1978; Kobasigawa, 1974; Perlmutter & Ricks, 1979; Ritter, Kaprove, Fitch, & Flavell, 1973).

In sum, the available data suggest that, given simple, supportive questions, even young children generally have sufficient memory skills to respond to the recall demands of testimony. However, two qualifiers must be added to this conclusion. First, while some studies used lengthy recall intervals (e.g., 28 days in Brown & Scott, 1971), available research has not tested possible developmental differences in recall over periods of months, as is a common demand in the legal system. Second, available studies have not involved recall under stress or in situations of great personal involvement.

Cognitive Development

Even if children have sufficient recall ability to testify, such testimony would be of dubious value if the memories were based on erroneous impressions. Consequently, a child's ability to conceptualize complex events and to order them in space and time are of importance. It is a truism of Piagetian theory that "preoperational"[14] children, often up to age 7, are unable to "decenter" from the most obvious attribute of a stimulus so that they can make use of all of the relevant information. To cite a classic example, young children who observe a clay string rolled into a ball and then rolled back into a string believe that there is more clay present when it is in a ball, which looks more massive. This inability to deal with multiple stimulus characteristics and relationships may affect the child's ability to recite facts accurately.

For example, young children have difficulty in understanding time independent of distance and speed and may have difficulty in describing the chronology of events. Piaget (1927/1969) observed three stages in development of concepts of time. In stage 1, common among 4- and 5-year-olds, time is defined in terms of spatial stopping points of objects. The object that stops further ahead is perceived as having traveled faster, longer, and further. In stage 2, the child begins to consider other factors, such as starting points. In stage 3, achieved by age 7 or 8, the child masters the concept of time. Later investigations (Berndt & Wood, 1974; Levin, 1977; Siegler & Richards, 1979; Weinreb & Brainerd, 1975) have indicated that acquisition of the concept of time distinguished from speed and distance typically comes even later than Piaget thought, perhaps near age 10 on the average.

However, some recent critics of Piagetian theory (cf. Siegel & Brainerd, 1978) have suggested that, on many tasks, preschoolers may be less egocentric and illogical in their thinking than Piaget believed. Borke (1971, 1973, 1975, 1978) has found that children 3 to 4 years old have the capacity to take the perspective of another,[15] provided that the specific task is a simple one and involves little use of language.[16]

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[14] See Flavell (1963) for a comprehensive review of Piagetian terminology, theory, and research.

[15] The classical Piagetian assessment of this ability involves a task of reproducing the view of a particular scene (i.e., a model of three mountains) from different vantage points (Piaget & Inhelder, 1956).

[16] *But see* Chandler & Greenspan (1972) (Borke's tasks actually involved taking perspective of oneself rather than of others). For a reply, see Borke (1972).

Siegel (1978) has argued that the classical finding of young children's inability to pass "conservation" tasks (like the ball of clay example cited at the beginning of this example) is often a manifestation of linguistic deficits. That is, young children may not understand the words "more," "bigger," etc., but they may be able to demonstrate understanding of the concepts nonverbally. Furthermore, there is considerable evidence that preschoolers can be trained in conservation skills (Brainerd, 1978), contrary to the Piagetian hypothesis of the necessity of cognitive structures which would not be expected to be developed adequately. In some instances, apparent failures on Piagetian tasks may also be the result of recency effects and organizational difficulties in recall rather than failures in conceptualization (Austin, Ruble, & Trabasso, 1977; Bryant & Trabasso, 1971.)

While these studies have considerable significance in understanding the nature of child development generally, they do not moot the point here that young children are likely to have difficulty in conceptualizing complex events and possibly therefore in describing them reliably.[17] Borke (1978), for example, interpreted previous findings of egocentrism on perspective role-taking tasks as resulting from "children's inability to perform on tasks which were cognitively too difficult for them, rather than any inherently egocentric orientation on the part of young children" (p. 38). Borke also noted that the cognitive changes in middle childhood do result in significant transformations in the child's capacity for empathy and reciprocal social interaction. Furthermore, while the work of Brainerd, Siegel, Trabasso, et al. indicates that children's capacities may be greater than frequently assumed, there is also little evidence that these abilities will be demonstrated without special training or assessment. Consequently, given the realities of the courtroom situation, cognitive-developmental factors remain a problem for evaluating children's testimony.[18]

Nonetheless, young children's immaturity of conceptualizaion may have less import for the reliability of their testimony than appears at first glance. First, the question at hand is whether children's testimony is so unreliable that jurors would be unduly influenced by it. Thus, the question is one of jurors' behavior as well as children's competency. Specifically, in the present context, can jurors accurately perceive what the objective reality was from an account of the subjective reality of the child? If so, the child's cognitive immaturity would be of less significance.

Second, children's lack of ability to comprehend a situation fully may not be so severe as to render them incapable of the level of observation required by the law. For example, understanding of sexuality and reproduction requires an understanding of physical causality and social identity. An accurate concept of the origin of babies is not reached typically until about age 12 (Bernstein & Cowan, 1975). On the other hand, there is evidence that by age 4 most children are quite aware of sex differences and willing to speak freely about them (Kreitler & Kreitler, 1966). Thus, in cases of sexual abuse, children can be expected to give an accurate description of what happened, provided that questions are direct and in language familiar to the child. Children will appear incompetent if the examiner uses technical vocabulary rather than slang or dolls or drawings. Monge, Dusek, and Lawless (1977) found that even ninth graders are often unfamiliar with "proper" terms for sexual anatomy and physiology:

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[17] There are other criticisms of Piagetian theory. Information-processing theorists (Klausmeier et al., 1979) and learning theorists (Brainerd, 1978; Cornell, 1978; Overton & Reese, 1973) have argued that mentalistic explanation of broad cognitive structures are unnecessary and less parsimonious than traditional learning principles. The assumption of universal developmental processes has also been brought into question by cross-cultural research on Piagetian tasks (Ashton, 1975; Hollos, in press). However, as noted in the accompanying text, while these criticisms have considerable import for theory development, they do not moot the basic point presented here that young children tend to have difficulty in conceptualizing complex events. For the purposes of formulating policy on children's competency to testify, reasons why there are developmental factors in conceptual skills are less important than descriptions of their existence.

[18] In a largely critical essay on the philosophical assumptions of Piagetian theory, Hall and Kaye (1978) made a similar point: "If psychologists are interested in describing the normal course of cognitive development, much of Piaget's theory may be of use. If, on the other hand, the theorist is interested in determining the child's ultimate capacity at any given time, he would use the approach exemplified by Trabasso" (pp. 165–166).

> . . . [O]nly 38.4% of the students knew the meaning of the word *menstruation*; 13.1% knew the definition of *scrotum*; 14.1% knew what *coitus* means; 30.3% knew that *Fallopian tubes* were part of the female reproductive system, and 54.5% knew that *seminal vesicles* were part of the male reproductive system; the meaning of *menopause* was known by 27.3% of the students. (p. 179)

Moral Development

If in fact children can relate their experiences adequately, then the principal concern is whether they will do so truthfully. While the courts have been particularly concerned with this problem in assessing competency to testify, the concern here seems misplaced. There is in fact little correlation between age and honesty (Burton, 1976). Indeed, police experience with child victims confirms the research experience in other settings. From 1969 to 1974, Michigan police referred to a polygraph examiner 147 children whose veracity about allegations of sexual abuse was questioned. Only one child was judged to be lying (Groth, Note 1).

Where there *is* a developmental trend, though, is in the reasons which children give to justify behavior. As children grow older, they become increasingly more sociocentric and oriented toward respect for persons (see reviews in Lickona, 1976a). Several points are noteworthy in this context.

First, the law is less interested in the witness's attitude toward the truth and conceptualization of the truth than in his behavior. Justice will be served if the witness tells the truth regardless of his reason for doing so. Therefore, such inquiry probably is superfluous.[19]

Second, even if there is some reason to ascertain a child's conceptualization of duty to tell the truth, the yes/no and definition questions commonly used on voir dire are inadequate measures. One of the philosophical underpinnings of current cognitive-developmental theories of moral development is that a given behavior may be motivated by vastly different levels of moral reasoning (Kohlberg, 1969, 1971, 1976).[20] Similarly, asking a child to tell the meaning of "truth," "oath," or "God" probably tells more about his or her intellectual development than about the child's propensity to tell the truth.[21]

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[19] The correlation between moral judgments and moral behavior is in fact rather modest (Mischel & Mischel, 1976).

[20] For critiques of Kohlberg's theory, see Kurtines and Greif (1974); Mischel and Mischel (1976); Simpson (1974).

[21] Adherents to social-learning theory (Mischel & Mischel, 1976), the major competing theory of moral development, would agree. From their point of view, children's behavior would be influenced primarily by

Third, understanding of the oath is probably unimportant. Indeed, it probably has little effect on adult behavior. To the extent to which the oath does have an effect, it would be on a primitive level of moral development common among young children: reification of rules (Piaget, 1932/1965) and avoidance of punishment (Kohlberg, 1969, 1976).

Where immature moral development may be a factor is in suggestibility. Young children tend to perceive rules as "morally absolute," unchangeable, and bestowed by authority (Piaget, 1932/1965). Therefore, they may confuse the suggestions of an adult authority figure with the truth. This hypothesis will be considered next.

Suggestibility

One of the problems which has been noted generally in eyewitness testimony is witnesses' frequent vulnerability to suggestion by opposing attorneys in leading questions (Loftus, 1979). That is, even in average adults, suggestibility is a real problem in credibility and competence of witnesses. Given the greater suggestibility which is frequently assumed to occur in children,[illegible] children's testimony might be *so* unreliable that in those instances the courts would not want to take the risk of unreliability which inheres in any testimony. In addition to the cognitive-developmental factors described in the preceding section, it might be expected on the basis of simple learning theory that children's behavior would be shaped by their perceptions of adults' expectations for their testimony (and hence the kind of testimony which will be rewarded or punished), particularly given young children's essentially dependent status.

One of the more reassuring findings of Marin et al.'s (1979) investigation was that young children were no less affected by a leading question than were adults. This finding needs to be further investigated, however. There was only one leading question used in Marin et al.'s study, and the interviewer probably had less authority in the eyes of a child than would an attorney asking what seem to be threatening, challenging questions in the imposing setting of a courtroom.[illegible]

There is some experimental evidence for developmental changes in suggestibility, although the changes are complex ones. In one frequently cited study involving conformity to suggestions by peers (Hoving, Hamm, & Galvin, 1969) it was found that task difficulty interacted with age in the degree of conformity to peer judgments. Children in grades 2, 5, and 8 were asked to determine which of two drawings shown briefly by a slide projector contained more dots. In the most difficult condition, both drawings contained 15 dots. In a medium difficulty condition, one drawing contained 15 dots and the other 16. One drawing contained 15 and the other 17 in the third and easiest condition. Before giving their answer, the children heard two other children respond. Hoving et al. found increasing conformity by age on the most difficult task. In the medium-difficulty condition, there was increasing conformity from second to

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the rewards, punishments, and models available in a given situation (in interaction with the child's cognitive competencies).

[illegible] See note 12 *supra*.

[illegible] Developmental change in perceived authority of court officials is an empirical assumption which is still largely untested, however.

fifth grade but decreasing conformity from fifth to eighth grade. Conformity decreased by age in the least ambiguous situation. Thus, in relatively straightforward situations, older children and early adolescents are willing to withstand peer pressure and make independent judgments. On the other hand, in situations requiring careful judgment, young children were actually less vulnerable to suggestion than were older ones, who presumably wanted some verification of an uncertain judgment. This finding is consistent with Marin et al.'s (1979) finding that young children were particularly unlikely to fabricate or distort memories in response to direct questions.

Perhaps more directly germane to the legal situation is research on adult influence on children. Again, though, there is not a simple relationship between age and conformity. In research involving first, fourth, seventh, and tenth graders, Allen and Newtson (1972) observed adult influence on children's judgments to decrease sharply from first to fourth grade and then to increase slightly in tenth grade. This result was consistent across several forms of judgments: "visual" (judgment of length of line), "opinion" (e.g., "kittens make good pets"), and "delay of gratification" (e.g., "I would rather have 50¢ today than $1 tomorrow"). Such a finding is consistent with the moral development and legal socialization literature in terms of young children's inflated perception of the power of authority.[28] There is the obvious related problem of coaching or threat (real or perceived) of punishment for unfavorable testimony when parents or other adults important to the child are involved in the legal action.

Most directly on point, Fodor (1971) found that children who yielded to the suggestions of an adult interviewer tended to score lower on assessments of level of moral judgment (according to Kohlberg's criteria) than children who resisted such suggestions. Given the prevalence of low-level moral judgment among young children,[29] there is some confirmation of the cognitive-developmental prediction of high vulnerability to adult influence among young children.

It should also be noted that young children's need for cues to stimulate recollection may exacerbate the problem of suggestibility in testimony.[30] Even if (as Marin et al.'s data suggest) children are no more swayed by leading questions than adults, that they are exposed to more of them means that their testimony may be less credible. In short, while more research is needed, there is some reason to be concerned about the suggestibility of young children (perhaps up to age 7). This might be evaluated on voir dire through the use of leading questions on matters not related to the case.

CONCLUSIONS

While there are some gaps in the relevant literature, the available research in sum suggests that liberal use of children's testimony is well founded, to the extent that the primary consideration is the child's competency to testify.[37] Memory appears to be no more of a problem than in adult eyewitnesses when recollection is stimulated with direct questions. Children also are no more prone to lying than adults. Data on suggestibility are less clear but seem to indicate fewer age differences than might be suspected, a finding which needs to be further investigated. Young children's ability to conceptualize complex events is more problematic, although it is possible that, with skillful examination, jurors can follow children's line of inference sufficiently to evaluate their testimony. That hypothesis is worthy of investigation, particularly given that the task of weighing children's competency is currently strictly the province of the judge.

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[28] See discussion *infra* of moral development; see also Melton (1980).

[29] There is some evidence that young children may be able to consider intention and other social ethical factors better than Piaget argued that they could (Austin, Ruble, & Trabasso, 1977; Darley, Klosson, & Zanna, 1979). However, there is nonetheless the weight of empirical evidence which clearly indicates that moral judgment is "indisputably developmental" (Lickona, 1976b, p. 239). Young children's moral judgments, while subject to social influence, are strongly affected by their cognitive limitations.

[30] Courts do in fact often allow attorneys great freedom in posing leading questions to children so that they might give more complete answers (Stafford, 1962)

The conclusions described here could be made more confidently if they were based on children's functioning outside the laboratory. Only Marin et al.'s (1979) investigation involved a courtroomlike task. Even that investigation involved interrogation under low stress. There are obvious ethical problems in inducing such stress. As an alternative, recall, conceptual skills, etc. might be evaluated in situations of naturally occurring stress, such as hospitalization. Experimentation might also be attempted in simulations of trials in courtrooms or simulated courtrooms.

Research is also needed on children's perception of the trial setting. No such data are available for young children (Grisso, in press; Wald, 1976). In the present context, such research would help to define the psychological demands of courtroom environments and possible effects on children's competency to testify. Such research might also be useful in preparing children for testimony, both to enhance the quality and probative value of their testimony and to reduce the stress which the legal process may induce in child witnesses.

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[37] There are concerns about whether testimony is unduly stressful for children, particularly when they have to confront defendants who have assaulted or sexually abused them (Libai, 1969; Lloyd, Note 2; Melton, Note 3). To the extent to which these concerns are well founded, the state's *parens patriae* interest in protecting children may conflict with its interest in punishing and incapacitating child molesters.

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PREPARED STATEMENT OF HON. MITCH MCCONNELL, A U.S. SENATOR FROM THE STATE OF KENTUCKY

Mr. Chairman, I want to commend you for introducing S. 1156, a bill which would amend chapter XIV of the Comprehensive Crime Control Act of 1984 as it relates to the victims of crime, by providing funds to encourage the States to implement protective reforms for the investigation and adjudication of child abuse cases. These and other proposed reforms, I believe, should be quite helpful in minimizing the additional hardship that a child victim suffers in the legal system. At the same time, they should improve the chances of successful prosecution of the legal action instigated against the perpetrators of crimes against children.

As an active member of this subcommittee, Mr. Chairman, as well as one of the leading advocates of the rights of children and family in the Senate, no one knows better than you the reality of child abuse and exploitation. It is an issue that has in many senses burst onto the scene in recent years. Unfortuantely, it is not a new phenomenon, but one that has simply escaped public scrutiny until recently. Yet partly because of your leadership, we are now well aware of the fact that child abuse and exploitation is a very real problem.

As you well know, Mr. Chairman, the legal system has traditionally been insensitive to the needs of child victims, and has made little or no accommodation for their needs and concerns. In many cases children are subjected to intimidation and disorientation by aggressive counsel, who often seek to wear down the child to the point of exhaustion or confusion. In one recent case in California, a young witness was reportedly subjected to 16 days of cross examination during a pretrail hearing. Such tactics may lead to truth and justice when adults are on the stand, but I do not believe that they have any place in the courtroom when young children are involved. I know that you share my view, for S. 1156 would encourage States to come to grips with the inadequacies of their judicial systems, and to implement the appropriate changes.

These are changes that I have long advocated and pursued, even before arriving in Washington. While chief executive of Kentucky's largest metropolitan area, I was instrumental in proposing and eventually implementing similar reforms in that State, and I am proud to say that Kentucky is in the lead in this area. The proposals of the Kentucky Task Force on Exploited and Missing Children, of which I served as chairman, suggested 18 separate improvements in the State Judicial Code. Among them were the provisions of a new Child Sexual Abuse and Exploitation Act, which allows citizens of the State to check off donations on their State tax returns for contribution to the State's Child Victim Trust Fund. In addition, the proposals called for legislation permitting the pretrail videotaped testimony of child witnesses, and for other improvements. Most of these were enacted as part of H.B. 486 in the 1984 General Assembly.

So I am pleased with the progress that has been made, Mr. Chairman, and am enthusiastic in my support of your bill. It is extremely important that we provide the incentive to those States that have not yet changed their thinking. I am confident that S. 1156 is a very effective vehicle, perhaps the best bill introduced in several years on the topic, for doing just that.

Mr. Chairman, I applaud you for your unceasing efforts to bring real, meaningful change to the way we approach such fundamental issues as the protection of our children and the effective prosecution of those who would do violence to them. I look forward to working with you for passage of this important bill.

Thank you, Mr. Chairman.

Senator **Denton**. I will call on our first witness, Hon. Robert E. "Bud" Cramer, district attorney for Madison County, and ask him to come forward and take a seat. Mr. Cramer is a 1972 graduate of the University of Alabama Law School. He has been a pioneer in the fight against sexual abuse in the Huntsville area since his election in 1980.

In 1983 he formed a sexual abuse task force of doctors, treatment experts, teachers, school officials, lawyers, prosecutors, police, and social workers. The task force was devoted to the identification, prevention, and treatment of child sexual abuse.

The task force gave way to the creation of the private, nonprofit Children's Advocacy Center in Madison County. The center handles all agencies involved with an abused child, including examinations by trained volunteer doctors.

Bud will be testifying on behalf of the Children's Advocacy Center and on behalf of the National Association of District Attorneys. It was my privilege to visit the Children's Advocacy Center in Huntsville not too many days ago. Bud, I enjoyed seeing you there. As I said at the time, I admire your work, and I admire the center very much. I welcome you to today's hearing. Your complete written statement will be placed in the record. I would ask that you restrict yourself to 10 minutes in summarizing your testimony.

STATEMENT OF ROBERT B. CRAMER, JR., DISTRICT ATTORNEY FOR MADISON COUNTY

Mr. **Cramer**. Thank you. Senator Denton, it's my pleasure to be here with you and to be a part of this testimony taking on behalf of the Children's Victim Witness Protection Act. We certainly are in support of that act, and I think that the provisions of the act would accomplish many of the things that we have accomplished through the Children's Advocacy Center program which we built in Huntsville, Madison County, AL, certainly with your help, Senator Denton.

First of all, I would like to say a number of the elements of your act speak directly to the program that we have carried on there. In 1981 we took three cases into the criminal justice system; that is, three cases that involved intrafamily cases of child sexual abuse. In the past year, 1984, we took 55 cases into the criminal justice system. In 1 week alone in the year 1984 we had 12 children in court in 12 different cases.

Many programs around this country have been routed around the criminal justice system. Many successful intervention programs have advocated avoiding the criminal justice system, which has allowed many of the perpetrators to go without being prosecuted and to escape the penalties that they should have to face.

We looked around in 1982, the year that we were attempting to build a program, for a successful formula from some other program from around the country. We could not find one. We realized that if the program was to be built in our community, that we would basically have to build our own program, which is what we set out to do.

We formed a task force in the community, basically brought the professionals together, met monthly, broke down into subcommittees; each subcommittee then basically designed a program for the community.

The cases were exploding upon us. We had in place a team review system where the protective service social workers would sit down with the assistant D.A.'s and with law enforcement detectives, and every other week for a full morning they would review cases of child abuse.

During the course of those reviews the caseload of child sexual abuse grew from approximately 10 percent to an incredible 90 percent of the cases that were reviewed at team review.

Obviously, the professionals in our community didn't have their act together, and that is what we built during the course of our program. There were three cases that came to our attention that were presented to the task force that caused us to say that we were going to redesign our system.

There was a case of a 12-year-old girl who had disclosed to her grandmother over a weekend visitation that for as far back in her life as she could remember her father and stepfather separately had been having sexual relations with her.

The grandmother the following day, as many grandparents would do, sought help from the community. She first turned to the police department, went to the police department, was interviewed there by a young male police officer who said that he didn't feel comfortable discussing this subject matter with this child.

He then routed the child to the protective service office, where a number of interview sessions began. From there the child and family member were literally bounced all over town from one professional agency to another. Eventually the child was interviewed some 14 separate times by 14 separate professionals. Now, this lasted over the course of almost 2 years.

This was a case that we presented to our task force as a reenactment, and at the end of this reenactment we looked around at the task force members. We said to one another, Is this how you want your system to work, is this what you want to do with this 12-year-old child and this grandmother; this is obscene. We are the system. If it's to be redesigned, it's going to be up to us to redesign the system.

It was that night that we proposed that we form this program called the Children's Advocacy Center, that we attempt to locate it in a house rather than a division of an office building. We felt like a house would be symbolic of a place where a child could turn to, an atmosphere that is generated more from a child's point of view rather than from a professional's point of view. We now have established that house. We opened that house in May of this year, and since that time many children and family members have been routed there.

By agency agreement what we are doing now is that if another 12-year-old child shows up at the police department with a grandmother, today for instance, that child is not interviewed at the police department. The child is directed, as I said, by agency agreement to the Children's Advocacy Center house. An interview team member will greet the child and family member there, and the interview process begins there.

If a child should show up at the protective service office, a social worker would then direct the child to the Children's Advocacy Center house. If they showed up at the hospital, the medical exam would be performed at the hospital, but then the child would be referred to the Children's Advocacy Center Program.

Once the interview is complete there, then other introductions that are made to other professionals occur at the Children's Advocacy Center. So what has happened in Huntsville is that the professionals are giving up their turf and they are going to a place that the child is more comfortable in.

In this day and time we are waking up to realize that our system is not designed for children. In fact, not only is it not designed for children, the system that we have been implementing is not beneficial to children. Interview rooms at the police department are designed for confrontation of criminal defendants. Other interview rooms in other offices are not designed for children.

We have three interview rooms at the Children's Advocacy Center which allow the children to be interviewed in different age environments or decor there in the center.

The program has been remarkably successful, and let me point out a couple of things. Rather than just the number of cases that we are taking into the criminal justice system, we would like to quickly point out this is not just a prosecution program. We advocated this system so that we could get children and family members to come into the system.

Because we felt like what the system was in effect saying to children and family members was that we don't want you—if you come into this system you will be worse off than you were before. And I think that is one of the reasons why many of the programs around the country sprang up trying to route the cases around the criminal justice system.

We recognized that professionals could not continue to operate in isolated worlds, that for them to do what they needed to do they must meet together, have a common base to discuss the problems that they are trying to solve, which is what our center provides.

We have a model multidisciplinary approach to cases of child sexual abuse. We found that just meeting together and reviewing cases together, that wasn't enough; that we needed a management program, that we needed an environment that would promote children coming into the program.

We have several things that we have done there, Senator Denton. We have used videotape there to tape the interviews of the children. Now, the interviewer basically makes that decision during the course of the first, second, or third interview session.

We allow that interviewer—we don't automatically use the videotaping in every case. We find that many times in our effort to establish the right kind of report with the children to get them to discuss this terribly complex subject matter, that many times if you were to introduce the use of the videotape there, that that would not promote the kind of discussion that an interviewer would want to encourage to occur.

But we like to videotape as often as we can, because the videotape is then used by the other professionals who can view the videotape and meet together and decide what to do with the situation as a team, and then rather than having to interview the child again the videotape can be used.

An assistant D.A. can come to the Children's Advocacy Center, look at the videotape and basically determine what kind of witness that child might make, whether the child has told the kind of information that the assistant D.A. would need to have to review the case for criminal prosecution.

We refer cases for criminal prosecution by a process that I have referred to as team review. Basically when the interview is complete, the child is then referred to therapy. The therapy sessions begin, and then a team review of the situation begins.

Team review is accomplished at a meeting of one assistant D.A., a law enforcement detective, the therapist who has been treating the child, and the initial interviewer of the child. There are other variations of team review that could involve a victim witness advocate from the district attorney's office.

We found that for us to prepare children and family members for criminal prosecution, that that can best be done in advance by a nonlawyer clerk who works out of the victim's advocate office in the D.A.'s office. For that clerk to know the kind of things that she would need to do, it would be important for her to attend the team review meetings, listen to the case, see the videotape, if it's available.

Then when it appears that the case is going to come into the criminal justice system, the Victim Witness Advocate would begin discussing the criminal justice system with the child and family member, talking to them, encouraging them to ask questions about the system that they are about to enter into.

As I said, our program is designed to prevent revictimization of the children, and that is what we found that our system has been perpetuating, that as bad as what the child had been through, going through these 14, 15, 16 different interviews over a period of months or years is, in fact, a revictimization, and that if we are to cure this, it can only be done through a program like ours.

Now, I won't say ours is a magical program and it's the only program that will work in any community in the country. I think the basic formula is there, and that is bringing the professionals together.

Senator Denton, again I would like to compliment you. Our program could not exist without your help. You helped us to obtain the demonstration project, funding from the Department of Health and Human Services which has allowed one assistant D.A., one social worker, one full time law enforcement detective, as well as administrative staff to run this program.

It's not an easy program to run, and it hasn't been an easy program to build. There were many times during the development of this program that I thought it might fall apart. It's very easy for professionals to hide behind agency policies and to say I can't, I can't, I can't. Many of the professionals that we met said that this program could not be put together for one reason or another, but it has been.

And I think it is a program that finally focuses on the child and family member, rather than the system. So it's not system oriented; it's child and family oriented. Thank you.

Senator **Denton**. Thank you, Bud. Your testimony was most enlighting. I think it proves the efficacy of the type program you use. As I understand it, it provides, after quite a bit of experimentation, a common place, which is regarded by the various authorities involved as the place for them to go where the child is kept in an environment suitable to the child.

It is the focus of a centralized, coordinated approach, which not the only adds efficiency to the investigation, resulting in a better trial of the defendant or defendants, but it is considerate to the child.

The team, in the specifics, is brought together when the child is being questioned so they don't have to question the child repeatedly. And, in addition, on some occasions you employ videotape so that those who are there at that particular time are not the only ones who can view and hear the testimony from that child. It can be repeated and perhaps used in court.

And then aside from all of those features, you do have adopted the responsibility of some therapeutic elements with respect to the child. And that begins when?

Mr. **Cramer**. Once the initial interview is completed—and the initial interview may be conducted by a protective service worker, or it may be a therapist from the community. But basically we have a cross-professional interview protocol, which any professional that does the interview would use.

Once that interview is complete then the child is referred to a specific therapist. The therapy sessions begin, and then the therapist becomes a part of the team review, bringing back into the team her attitude or his attitude about the child's participation in the criminal justice system. It allows the D.A. to have his hand held, and rather than making a decision that might affect this 12-year-old child for the rest of her life, he has the aid of other, better educated professionals with respect to mental health issues there to assist him in making that decision.

Senator **Denton**. In abbreviating your statement as we requested I'm not sure you had time to mention the nine-room house providing a warm suitable environment for children. You have to split up into age-appropriate interview rooms. You have art materials, anatomically correct dolls which make it a little easier to discuss the matters. You have art that—I already mentioned it, but it makes the children feel comfortable.

The place is not extravagantly furnished, but it is comfortable. And I think it's an appropriate degree of financial investment as well as meeting the criteria which we want to see met in order to protect the child from, as you say, an otherwise heartless system which has hurt the child.

Regarding the videotape, as you know, the sixth amendment provides the accused with the right to be confronted with the witnesses against him. Any move to balance that right of confrontation with the child victim's right to be protected has, as you know, already raised some constitutional questions.

In processing S. 1156 through the Senate, I want the benefit of your advance advice. Can you reconcile the modification of the hearsay rule, the competency rule, or the use of videotaping with the sixth amendment rights of the accused? And would you include in your answer any implications you see respecting the use of perhaps closed circuit television?

Mr. **Cramer**. Senator Denton, I think having heard national researchers discuss this constitutional issue, I think Alabama's recently enacted videotape statute, successfully attempts to preserve the rights of the defendant to confront the witnesses, and yet to provide the child victim with the maximum protection from that offender. The availability of the child has got to be an issue that is preserved in any statute. In other words, the child must be available so that the defendant, if requested, could confront that child. Use of closed circuit TV certainly is one way.

I think certainly when the Constitution was written no one knew about the advanced technology that we would have. And I think recently there has been a difference in interpreting just what the right to confront really means.

But I think we have got to come to grips with the children's position and the issues that face the children, and not be so defendant oriented that we overlook a number of cases of abuse. And I don't mean just touching and gently fondling; I'm talking about hard core sexual abuse of children that have to cause us to loosen some of the restrictions that we have previously placed.

In our program, our success with confronting the offender has been so great that we don't believe we will much need a videotape statute. Now, when we do need it, we do need it, so I'm certainly glad that we have it on the books. But basically we have concluded that once we can get the children to talk to us and once we can overcome that big gap, then we would be able to likely take the child into the courtroom if we had to.

But I might point out one thing also, is that during the last 6 months, which would be the first 6 months of this year, we have taken 40 cases into the criminal justice system. We have had pleadings in 38 of the 40——

Senator **Denton**. Excuse me?

Mr. **Cramer**. We have had pleas of guilty in 38 out of the 40. I think it is reflected in our program's position in the community in that it's widely known that we have an effective program, that it is bringing the professionals together, that it is getting the children ready to go into the courtroom when they must go into the courtroom. So we are not having to take as many children into the courtroom as much because of the success of the program, I think. But it is an issue that needs to be looked at very close.

Senator **Denton**. So the defense attorney realizes he is denied the possibility accompanying the intimidating or wearing down of the poor child?

Mr. **Cramer**. I think so.

Senator **Denton**. And in many cases he is just going ahead and advising the plea of guilty?

Mr. **Cramer**. I think so, rather than relying on the fact that we can't take the children into the courtroom. They watched and we can, and they are not relying on that any more. They are encouraging their clients to plead guilty.

Senator **Denton**. Would you recommend then that we do or do not have as one of the guidelines some kind of proposed videotape legislation?

Mr. **Cramer**. I recommend that you do. I would say that each State needs to be encouraged to do that, because there may be communities that can't build a program like ours. There may be communities that can't accomplish the consolidation of services out of a neutral location as ours is doing.

And it may be in those States that the professionals, the prosecutors would need a videotape statute. And it very well may be that I will be telling you 6 months from now that I'm very happy that we have a videotape statute. I would rather have it than not have it.

Senator **Denton**. I want you to comment, if you will, on the statement made by Lois Herrington, Assistant U.S. Attorney General at the Southeast Symposium on Child Sexual Abuse which you hosted in Huntsville. She said,

> A youngster who is an offender is provided certain protections under our system of law; that is, a youngster who is an offender.
>
> The paradox is that children who are victims are not. They are treated as though they have to prove they are victims. With an adult victim, law enforcement immediately believes him or her and goes about trying to make an arrest. With child victims, right away we doubt their credibility, although we have research that has shown that children are our best witnesses.

Do you agree with that assessment, and do you see any justification in the disparity in treatment between adult and child witnesses?

Mr. **Cramer**. Absolutely I agree with her. Senator Denton, the general public basically has been barraged with a lot of media stories about child sexual abuse cases around the country. This subject matter is so shocking, you want to believe that a natural parent would not touch his natural child in a sexual way. You would like to run from that information.

I remember the first situation that I confronted. I looked for a way to explain that away. And one of the quickest ways to explain that away is to say, well, can a 12-year-old really be a credible witness. I have found in my experience now unfortunately with hundreds of children, children tell the truth.

More often than not they will only tell you part of the truth, and your job is to put them in a situation that will allow them to tell you the full story. They will tell you only part of the abuse, because they feel so guilty and so ashamed and this secret has been driven so in them, that they don't want to disgust you or to shock you by telling you what they have been through.

Children are credible witnesses. We need to believe children, and we need to treat them as sensitively as we treat the adult victims. Certainly it's a sad reflection where we have a system that does treat juvenile offenders and adult offenders in a much more careful, cautious, constitutional way than we treat the child victim.

Actually we are warehousing potential killers if we don't encourage a 7-, 8-, 9-, or 10-year-old to tell his story. All of a sudden we are going to have a 22-, 24-, and 25-year-old that is going to be a killer.

Senator **Denton**. Well, I think your philosophy of trying to adapt the system, the judicial system to the special needs of a child is a worthy one and a necessary one. And this question evolves from the present system's provision that leading questions can be asked only by the defense attorney.

It has been suggested that in child abuse cases, there be a modification of the rules of evidence to allow the prosecuting attorney to ask leading questions of the child victim, obviously because the child's intellectual prowess is less mature and, therefore, the child may need some help in the rationalization necessary for an intelligent answer. As a prosecutor, would the use of a leading question be useful in examining the child victims, do you believe?

Mr. **Cramer**. Absolutely. I believe that children should be allowed to have a prosecutor ask them leading questions, allow a jury to determine if the answer to that question is a credible answer or not. It's much like qualifying a child to testify in a criminal case. It's my opinion also that any child should be qualified as a witness, and that the testimony then that is elicited from the child should basically be submitted to a jury, and it should be up to them to decide whether to believe the child or not. I do believe that we should be allowed to ask leading questions.

Senator **Denton**. And I'm advised that there is not a lot of anticipated resistance to that modification.

Mr. **Cramer**. That's right.

Senator **Denton**. One of the suggested procedures in S. 1156 which could minimize the additional trauma to the child victim would include establishing interdisciplinary teams of child abuse professionals. That wording is used in the bill, and establishing interdisciplinary teams of child abuse professionals which is modeled after your approach.

The Children's Advocacy Center utilizes a community interagency response to sexual abuse that focuses on the child victims, and I know the Center has a grant proposal pending with the Department of Health and Human Services to study the effects of intervention in child sexual abuse. What do you think that study will produce?

Mr. **Cramer**. I think the study will reflect that rather than having the involvement in the criminal justice system be a counterproductive proceeding, that it will be seen that through a program such as ours, the involvement of a child in the criminal justice system is a therapeutic involvement. We have all concluded, or many of us around the country have concluded, that we shouldn't involve children in the courtroom, that if we encourage the child to testify against his or her own father and then to go through those proceedings, and then perhaps the offender is found not guilty, that we have done more damage to the children. But I think this research project that we are applying for would demonstrate to the country that if sensitively approached, involvement in the criminal justice system can be therapeutic.

Senator **Denton**. Well, I'm familiar with recent surveys which show a surprisingly large proportion, particularly of women, who having been asked and with privacy and confidentiality assured, that a surprising proportion of those had answered affirmatively when asked were they sexually abused as a child.

I'm familiar too from other hearings related to this subject that there are residual effects that affect these people psychologically, that affect them in terms of their courtship, their marital relationship, and so on. So the therapeutic aspect of eliminating one of the causes, which is the unspeakableness, the inexpressibility of it, the containment of the experience within themselves, which according to many psychiatric indications is not healthful in the respects I mentioned, I understand how it would work to relieve that situation.

We are used to watching the make-believe world of television and sometimes we lose focus on what is real and what isn't. Is there a danger that a jury viewing a videotape of a child victim's testimony, instead of observing live testimony, might not be able to evaluate and/or appreciate the real nature of the extent of the child victim's injuries? In other words, they are not really a victim because they are just seeing it on the tube?

Mr. CRAMER. The reality of it maybe doesn't come home to them as quickly through videotape as it would from live presentation of the testimony. That is a tactical, sometimes a tactical decision that the prosecutor might want to make. I would hate to think that anyone would decide whether to put a child into the courtroom or not just for tactical reasons.

But a number of times when we have considered whether to present the child's testimony or not or possibly use a videotape, we have considered the child's point of view, the child's ability to confront the offender, the child's ability to walk into that kind of courtroom setting and take a stand and be sworn as a witness. Many times we decide that we don't want to put a child through that. Then certainly videotape is an alternative.

But, of course, you have got a procedure that you must go through to get where you can take the videotape, and that has to be sensitively approached also. There are other times when it might be healthy for a child to walk into the courtroom, to be able to tell his story and to walk away feeling like I did it, I told, this is over with, the system held my hand through this, the system supported me and I'm a healthier person for it. Of course, they can't articulate it quite that way, but that is the effect that we hope to have.

I will say this: There is a lot of jury education that needs to go on in the sense that jurors have a tendency to run from these issues as well, to look for ways to explain it away, to perhaps say that, well, I can't base this conviction on the testimony of a 10-year-old or a 12-year-old.

And it may be that presenting a videotape might be an indication to them that there is some weakness in the case and that you couldn't bring the child into the courtroom. But those are the kind of decisions that the prosecutor must make. But a prosecutor needs available as many alternatives as possible, and the use of videotape is something I think he should have available to him.

Senator DENTON. I thank you very much, Mr. Cramer. We will be remaining in touch with you as someone we acknowledge as having been very successful in pioneering better approaches to the issue that we are dealing with today as we formulate the final form of this legislation and perhaps form other related legislation. We express our admiration for what you have done already and our confidence that your work in the future will be even more productive and helpful to our society.

Mr. **Cramer**. Thank you, Senator. If I may submit one additional item for the record. This is an article which I wrote, "The District Attorney as a Mobilizer in a Community Approach to Child Sexual Abuse." I would like to present that as well as a written statement at this time.

Senator **Denton**. Thank you. It will be included in the record without objection. Thank you very much.

[Prepared statement and article follows:]

Prepared Statement of Robert E. Cramer, Jr.

I am Robert E. "Bud" Cramer, Jr., District Attorney of Madison County (Huntsville), Alabama, and President of the Children's Advocacy Center, a program that uses a multidisciplinary approach to child sexual abuse. I appreciate this opportunity to describe how the professionals in Madison County respond to reports of child sexual abuse and to comment on the Child Victim Witness Protection Act of 1985.

First of all, Senator Denton, I would like to commend you for your efforts on behalf of child victims and troubled youth in our country. Your backing of much needed federal programs that assist child victims of sexual and physical abuse and exploitation, missing children and their families, runaway youth and juvenile delinquents has been crucial to the continuation of these programs and, in some cases, their implementation or expansion.

Moreover, I would like to express my appreciation for your ongoing strong support of what we in Madison County have been doing to aid child victims of sexual and physical abuse. Your efforts have assured that our model intervention program has received the attention it deserves in Washington and has helped us to win some federal funding to test our program as a U. S. Department of Health and Human Services Office of Human Development Services demonstration site.

Child Victim Witness Protection Act of 1985

Your Child Victim Witness Protection Act of 1985 is closely related to what we have been doing in Madison County. As a district attorney who has devoted years to mobilizing professionals in my community to, as your bill states, "implement protective reforms regarding the investigation and adjudication of child abuse cases which minimize additional trauma to the child and improve the chances of successful criminal prosecution or legal action," I can tell you that the Child Victim Witness Protection Act is a very important piece of legislation. It acknowledges, as professionals in my community have recognized, that the systems responsible for helping and protecting child victims are all too often revictimizing them.

We are showing daily, through the Children's Advocacy Center program, that participation in the system, specifically the criminal justice system, need not cause additional trauma to the child victim but can, in fact, be therapeutic. Our program uses a multidisciplinary approach to child abuse that involves law enforcement, child protective services, the prosecutor's office and mental health therapy in a community response. Moreover, in addition to focusing on the child victim, the Center program has increased the effectiveness of the professionals who serve them and enabled us to hold more offenders accountable for their crime.

It is a program who elements can be replicated in any community in this country. It is a program that must be implemented in communities across this nation. Over the last year-and-a-half, I have spoken before national, state, and local groups. There is tremendous interest in our program; there is a recognition that the system is not working right for children. Unfortunately, there also exists a can't do, cannot do, attitude.

Developing a multidisciplinary program is not easy, but it is possible. Professionals committed to redesigning their community's system response to meet the needs of child victims are the most important resource. A little financial incentive also can go a long way toward breaking down the barriers of "can't do" attitudes. That is where your legislation would be so valuable.

As we have seen in other federal programs, most notably the Juvenile Justice Act, a small amount of federal funding can be a powerful force for positive change. Your bill offers just such a catalyst. It will give people, who are advocating for change, an additional tool to encourage the implementation of needed reforms. Thus, your program can speed the process.

As to the question of where to locate the Child Victim Witness Protection Program, I believe, for at least three reasons, it belongs in the Department of Justice. First, the program focuses on the treatment of child victims in the justice system and the prosecution of offenders. Second, child abuse is a crime, and putting the program in the Justice Department recognizes the key role played by the criminal justice system in responding to child abuse.

Third, after four years of working with the problem of child sexual abuse, I am more convinced than ever that prosecutors, as the chief law enforcement officers in their communities, are in the best position to take the lead in mobilizing agencies and professionals to make the changes needed to implement an effective and humane response to child abuse. I, as district attorney, can call the police chief directly to ask for his cooperation. As the chief law enforcement officer, I could, if necessary, tell child protective services how a victim of the crime of child sexual abuse will be interviewed. Even more important, in my position, I can work with decisionmakers in other community agencies and professions to alter policies and procedures to enable us to develop a coordinated response to child abuse.

Development of the Children's Advocacy Center Program

In 1981, when I first, as a newly elected district attorney, had to confront the problem of child sexual abuse, there were no outside resources to help. I quickly learned that I, as a lawyer, was not prepared to act, in my isolated world as a prosecutor, to make decisions that were critically important and profound for the child victims and their families. My first cases also taught me that the way I and other professionals were routing children and families through the system was incredibly inhumane.

Typically, their route through the system conveyer belt followed this pattern: to the police department for hours; shuttled from the police department to protective services where they underwent a battery of interviews; to the hospital emergency room where they waited for hours; to treatment; to guardian ad litem; to private attorney; to the district attorney's office to testify before the grand jury, an appearance for which they were not prepared -- a process that severely damaged the victim and family and made the successful prosecution of the offender unlikely.

Unfortunately, this scenario is certainly played out daily in communities across our nation.

Madison County's response to child sexual abuse looked this way, even though I had implemented team review, in which representatives from law enforcement, child protective services and the prosecutor's office met biweekly to review cases of child sexual abuse and severe physical abuse. At these sessions the district attorney's office advised child protective service workers regarding courtroom testimony, elements of criminal offenses, proper file documentation, and when to refer a developing cases to law enforcement. The team was also able to develop a more complete profile of the victim, family and offender. Some professionals were communicating, but our response was still agency-focused, not child focused.

During the period from 1981 to 1983, reports of child sexual abuse began to increase dramatically (and continue to do so up to the present time). In 1983, the professionals in our community formed a task force to examine how the system was responding to the problem. We presented the reenactment of a case that followed the dismal path outlined above. Members of the task force looked at one another and asked, "Is this the way we want our system to work?" The answer of course was, "No."

The professionals on the task force, representing child protective services, law enforcement, prosecution, teachers, mental health, medical personnel, and other interested members of the community, then went one crucial step further. We acknowledged that "We are the system, and we can change it." And we did. The result is the Children's Advocacy Center program.

Yet, it took about one year from acknowledgement of the system response problem and the necessity that we professionals find the solution to it, to develop and open the Center. As I said earlier, implementing a multidisciplinary program is not an easy task. It requires that professionals move out of their isolated, familiar worlds, in order to cooperate with other professionals. It requires that agencies adjust their policies and procedures to permit this cooperation. In the case of the Children's Advocacy Center program, it required that professionals put the needs of the child victim before the individual needs of their agencies.

But when the Center opened, we had written agency agreements from the Huntsville Police Department, Madison County Division of the Department of Pensions and Security (child protective services in Alabama), Madison County District Attorney's Office and Huntsville/Madison County Mental Health Center to cooperate in the program.

Operation of the Children's Advocacy Center Program

The Children's Advocacy Center is located in a house in an easily accessible area of downtown Huntsville. The nine-room house provides a warm, non-threatening environment for the child while accommodating the staff with professional office space.

By written agency agreement, all cases of child sexual abuse and severe cases of physical abuse in Madison County are referred to the Center. Staff includes a project administrator, program coordinator, program assistant, protective service worker, law enforcment detective, and assistant district attorney, the latter three detailed from their respective agencies.

The initial and any subsequent interviews are conducted in an age-appropriate interview room. Necessary aids, including anatomically correct dolls and art materials, are provided. The Center is equipped to videotape the interview(s) for use at team review meetings and to brief other professionals working on the case. This reduces the number of times a child is interviewed, as well as the number of different people who interview one child.

The interviewer is responsible for cross reporting the case to other agency representatives at the Center. The interviewer also makes the referral for a medical exam. The participating agencies use comprehensive standardized forms designed for the Center program to facilitate gathering information needed to serve the child and to allow cases to be "tracked" for evaluation purposes.

When the initial interview is complete, the interviewer presents the case at the biweekly team review meeting. The team reviews new and ongoing cases. The team is composed of representatives of child protection, law enforcement, the district attorney's office (including victim advocate), and the Children's Center. The team makes recommendations and decisions concerning the "routing" (next step or disposition) of the case, custody, active law enforcement involvement, prosecution, and preparation of the child and family for possible participation in the criminal justice system.

As the case progresses, additional personnel may need to interact with the child. All introductions of the child to a new professional are made by the initial interviewer. These introductions are almost always made at the Center. (An exception may be an emergency room physician.)

Therapy referrals are made when the initial interview is complete. The therapist's introduction to the child takes place at the Center, and subsequent therapy sessions may be held there. Once the therapist obtains a "release of information," he or she becomes part of the review team.

The route a case takes is determined by the team review process from initial interview to case retirement. This ensures a comprehensive approach which maximizes the quality of services to the child and family. It also provides a constant support system for the professionals serving the child.

Feedback from young victims and their families tells us that their experience with the system is now therapeutic. The professionals who serve them are working more closely than ever before and finding more satisfaction in the positive resolution of a greater number of their cases. The program enjoys broad support in the community.

In a county of 225,000, we will serve about 240 child sexual abuse victims this year. On any given day, the Center has 30 active cases. Of those, 40 percent will be referred for criminal prosecution, and almost 100 percent of these cases will result in guilty pleas or convictions.

Conclusion

As you can probably tell, I am quite proud of the way professionals in Madison County are now responding to cases of child sexual abuse. Unfortunately, however, many communities in our nation still treat child victims of crime the way we did four years ago. It is programs like the ones the Child Victim Witness Protection Act would encourage that offer hope for these children. Thank you. I also have some more detailed material on the Children's Advocacy Center that I would like to enter into the record. I would be happy to answer any questions.

Robert E. Cramer, Jr.

Biographical Sketch

Robert "Bud" Cramer, Jr., was born on August 22, 1947, in Huntsville, Alabama. He attended public schools in Huntsville and graduated from Huntsville High School in 1965. He finished his undergraduate work in 1969 at the University of Alabama at Tuscaloosa. He received his law degree from the University of Alabama Law School in May, 1972, and was admitted to the Alabama State Bar in September, 1972.

Bud taught at the University of Alabama Law School from 1972 until 1973, where he was Director of Clinical Studies at the law school. From 1973 until 1975, he served as an Assistant District Attorney in Madison County, Alabama, and then entered the private practice of law. He continued his law practice until he was elected District Attorney during the fall of 1980. He was sworn in as District Attorney in January, 1981.

Bud was a member of the Steering Committee which organized the Big Brother/Big Sister Program in Madison County, Alabama, and he is currently on its Board of Directors. He has sponsored an Explorer Scouts Law Post for the last three years. He has been a Director of the Creek District, Boy Scouts of America for 1981 and 1982.

The following programs were organized by Bud Cramer after he became District Attorney: He drafted and participated in passing legislation which allowed domestic violence shelters to be built across this state. He was a founding member of the State Advisory Board of the domestic violence shelters in this state. Our local shelter has been established through this statewide effort and is called HOPE Place.

The Special Services Division/Worthless Check Unit was established by Bud in May, 1982, and became the model program for the State of Alabama. The program was so successful that, at the request of the State District Attorneys' Association, Bud wrote legislation authorizing the establishment of similar units on a statewide basis. A pattern similar to that of Madison County's Unit was used by the State of Tennessee to establish its program. The unit employs five and is self-supportive through a bill that enables them to collect a service fee from the bad check writer who has been deferred from prosecution. The unit has recently become computerized. In 1984, the Special Services Division/Worthless Check Unit received a national achievement award from the National Association of Counties.

The Crimestoppers Program was established in Huntsville, Alabama, in February, 1984, through the sponsorship of Bud Cramer and the Chamber of Commerce.

In the fall of 1983, Bud established a Victim/Witness Program in his office and hired a full-time clerk to act as a liaison between the District Attorney's Office and those individuals (primarily children) who are the victims of crime.

Bud participated in forming the Child Sexual Abuse Task Force in the fall of 1983, and in August, 1984, this organization adopted the name of the Children's Advocacy Center, to be known as The Children's Center.

He was named Outstanding Young Man of Madison County in 1977. He was nominated by the State of Alabama Chapter of the National Association of Social Workers as its Public Citizen of the Year for his work in the area of child sexual abuse. He was selected from 42 state nominated candidates as the National Public Citizen of the Year by the National Association of Social Workers. This award was presented at a reception in Washington, D.C., in June, 1984. The Washington Post ran a full "feature article" on Madison County's work in the area of child sexual abuse.

Bud was selected by the National District Attorneys Association to be its representative to the American Bar Association National Legal Resource Center for Child Advocacy and Protection.

The National Association of Juvenile and Family Court Judges selected Bud to be one of fifteen "national experts" to participate in a National Policy Conference on the child-victim of sexual abuse. This conference is scheduled for February 24-27, 1985.

THE DISTRICT ATTORNEY AS A MOBILIZER IN A COMMUNITY APPROACH TO CHILD SEXUAL ABUSE

by Robert E. Cramer, Jr.
District Attorney
Huntsville, Alabama*

Although child sexual abuse is not a new problem, its complex character in relation to the criminal justice system and its magnitude have only recently come to the attention of prosecutors. It is a problem that requires a shift in the way the criminal justice system responds, and in the way it interacts with other systems, at the same time that the number of cases is increasing dramatically.

Dealing with child sexual abuse cases has been frustrating for most prosecutors' offices, because the traditional criminal justice system and other agencies that respond to child sexual abuse are not equipped for the child victim. However, if our society is ever going to convey the clear message that the sexual abuse of children is not an acceptable behavior, then we must redesign the systems responsible for helping and protecting child victims so that the children indeed do benefit and offenders are held accountable. If we continue to impose little or no cost on abusers of children, because of the inability and insensitivity of our public systems, we cannot expect offenders' behavior to change.

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*Huntsville, Madison County, Alabama, comprises the 23rd Judicial Circuit of the State of Alabama. The Circuit is located in North Alabama and is 100 miles south of Nashville, Tennessee, and 100 miles north of Birmingham, Alabama. The county population is 225,000. The District Attorney's Office in this Circuit employs twelve full-time assistant district attorneys, three investigators, a victim-witness coordinator, a special projects director, a coordinator for children's advocacy, and other administrative assistants and clerks.

Fortunately, I believe, and our statistics bear out, that in Madison County we have found a way to address this problem that works for the child and for the professionals, including prosecutors, responsible for responding to child sexual abuse. In our community we serve about 240 child sexual abuse victims annually. Some 40 percent of their cases are referred for prosecution and almost 100 percent of these result in guilty pleas or convictions. We did this by implementing an approach that focuses on the child, rather than the separate needs of the agencies and professionals involved.

It has taken a lot of work, but prosecutors, as the chief law enforcement officers in their communities, are in an excellent position to take the lead in mobilizing agencies and professionals to make the changes needed to implement a multidisciplinary approach to the problem, an approach that has proven more humane and effective in our community and can be in others as well. Although each community is composed of a unique chemistry, there are basic elements on which a program can be built.

There are many factors involved in developing a program like ours. One of them is time. In Madison County it took about one year from acknowledgement of the system response problem to the opening of the Children's Advocacy Center. The child sexual abuse problem began to be visible three years previously.

Reports of child sexual abuse began to increase rapidly in Madison County (Huntsville), Alabama, in 1981, the year I became District Attorney. Between the years 1973 and 1975, I had been an Assistant District Attorney assigned to Juvenile Court and was required to work with representatives from the Madison County Department of Pensions and Security (protective service agency in Alabama). When I was elected District Attorney, I called on this experience and set up review meetings with the protective service workers. In the beginning, representatives from my office met with the protective service workers to review specific cases of child abuse on at least a monthly basis. During these sessions, the District Attorney's Office advised the protective service workers regarding courtroom testimony, the elements of criminal offenses, proper file documentation, and when to refer a developing case to law enforcement.

The first cases involving the sexual abuse of children were reviewed during early 1981. Throughout the year, we were faced with an overwhelming increase in such cases. By year end, statistics reflected that 35% of the abuse cases reviewed involved child sexual abuse. Alarmingly, the number grew to 90% of the abuse cases reviewed in mid-1985.

It became obvious that most of the professionals involved with the child were not communicating with one another. Medical exams were incomplete and were often performed in hospital emergency rooms where the children were waiting for hours. The children and their families were being bounced from agency to agency--from law enforcement to protective services to the hospital to therapy through the juvenile court system through the District Attorney's Office and back and forth and back and forth. We discovered that the system itself was revictimizing the child. Few children and families could survive much less benefit from this approach; yet, reported cases were reaching an epidemic level.

Recognizing that something must be done, I began an effort to redesign the existing approach to child sexual abuse cases in late 1981.

Team Review

First, I scheduled the case review meetings more frequently (biweekly) and expanded them to include law enforcement detectives from both the Huntsville Police Department and Madison County Sheriff's Department's juvenile units. Specialized forms were designed for the presentation of cases at the team review sessions. The forms documented all decisions that were made, including referrals for therapy and recommendations for criminal prosecution. The cases were reviewed on a continuous basis to allow the team to develop a more complete profile of the victim, family, and offender. In 1983, the victim/witness coordinator from the District Attorney's Office began meeting with the team.

The team review has strengthened relations between the police detectives and the protective service social workers. The protective service workers and the law enforcement detectives jointly investigate and develop a report in cases involving child sexual abuse. They initially interview the victim, and then may afterwards jointly confront the alleged offender. This has caused a dramatic turnaround in the attitude of law enforcement detectives and social workers. The team review experience has allowed each to better understand the philosophy of the other agency and has prevented the duplication of effort.

We recognized that the family needs to be referred for therapy early in the intervention process. The team review sessions were expanded again to include the therapist who is treating the child, family, and or offender. The therapist updates the team as to the progress of therapy, consistent participation in therapy, and attitudes of the child, family, and/or offender. The input of the therapist is vital in making a determination as to whether a case should be referred for criminal prosecution.

A general round table discussion is held on one of the Fridays not taken by the team review schedule. Treatment professionals, along with protective service workers, law enforcement, and representatives of the District Attorney's Office, meet to discuss any problems incurred in this review process.

Community Approach

In 1983, as a parallel to the team review, our community formed a child sexual abuse task force. Because of the increasing number of these cases reviewed at team review, the professionals felt a need to alert and inform other professionals and community leaders as to what was occurring. Representatives from the District Attorney and protective service offices appeared before our county child abuse prevention coalition (which had existed in the community for almost ten years) and informed them of the alarming number of child sexual abuse cases in the community. We cited the need for increased professional involvement, particularly from the medical community, and emphasized the need to educate teachers, nurses, daycare workers, and others who might be exposed to cases of child sexual abuse. From this impetus, the child sexual abuse task force was formed.

This task force included representatives from medical, treatment, nursing, education, prosecution, protective service, law enforcement, daycare, and other community agency representatives and volunteers. The task force met twice a month and was organized into four subcommittees that included: treatment, intervention, identification, and prevention. Each subcommittee developed different goals and made recommendations to the task force.

The primary importance of the task force was to bring agency representatives together to discuss a problem that they had in common. Most agency representatives in the task force had "hands-on" involvement with the reported cases of child sexual abuse; however, many did not know one another. The protective service workers often referred children and families to therapy without knowledge of the treatment philosophy of the therapist involved. Many were unfamiliar with the process of criminal prosecution and were reluctant to report cases into the system because of the effect it would have on the family. The task force meetings and projects allowed professionals to discuss their common problems with one another. It brought the professional community closer and closed gaps in their communication.

Multidisciplinary Program Proposed

In August of 1984, the Intervention Committee of the task force proposed to the task force a program for the community called The Children's Advocacy Center. During the August meeting of the task force, a reenactment of an actual case of child sexual abuse was presented to the members present in an effort to illustrate the previous approach taken by all the community agencies. The professionals then recognized that the present approach was actually revictimizing the child.

A matter of particular concern was the unnecessary, multiple interviews that the children were experiencing. Although community agencies were working together by 1984, the children were still being bounced from agency to agency. At each agency, the children were being interviewed by yet another "stranger." By the time cases were referred for criminal prosecution, the children, and often their families, were "worn out." Methods of dealing with these cases were not as effective as they could be and were even damaging to the child.

As an alternative, a multidisciplinary, child-focused program was proposed to the task force, to be known as The Children's Advocacy Center. This program was to focus on a "advanced" team approach to reported cases of child sexual abuse. The objective was to demonstrate a unique and successful community approach to interagency management of child sexual abuse reports. The overall goal of the project was to consolidate agency and professional involvement in addressing the problem of child sexual abuse. This proposed program is now a reality.

The Children's Advocacy Center

The Children's Advocacy Center is located in a house in downtown Huntsville, Alabama. A house was chosen rather than an office building. The house symbolizes a non-institutional approach to the handling of child sexual abuse cases. All relevant community agencies, by agreement, coordinate their activity out of the Center. Each law enforcement agency has assigned one detective as its liaison to the Center. The District Attorney's Office has assigned an assistant district attorney as its full-time liaison, and the protective service agency has assigned a full-time social worker as its agency liaison to the Center. They comprise the program staff. Administrative staff includes a program coordinator and clerical support.

By written agency agreement, all reports of child sexual abuse are referred to the Children's Advocacy Center. Rather than visiting police departments, protective service offices, hospital emergency rooms, mental health treatment facilities, and the prosecutor's office, the children are directed to the Children's Advocacy Center. Their first contact at the Center is with a member of the interviewing team.

The interview team has been carefully selected from protective service and law enforcement personnel. Careful attention has been given to the interview methods and approach. There are three interview rooms available at the Children's Advocacy Center, and each is designed for a different age group. There is a playroom for very young victims and two other rooms for older victims.

Interviews are conducted by a team member and are videotaped when appropriate. The videotape is an important part of the case review system conducted at the Children's Advocacy Center. The interview may be conducted in phases or sessions. Children normally will not tell the full story in one interview. The interviewer begins by establishing a relationship of trust with the child before the interview starts. The child is given a tour of the house and allowed to inspect every room. The child should be able to feel that the Children's Advocacy Center is his or her special place.

At the completion of the interview, the child and, when appropriate, the family are referred for therapy. The therapist is contacted and therapy sessions can be initiated at the Children's Advocacy Center. It is important that each introduction of the child to any agency representative occur at the Center on the child's "turf."

Once the initial interview is completed, the case is presented by the interviewer at one of the biweekly team review sessions. The interview videotape may be shown at special review sessions. When the child completes the initial therapy session, the therapist then becomes part of the team review and should participate in making recommendations for further procedures.

Less than one half of reported child sexual abuse cases are referred to the criminal justice system. However, the involvement of a child and family in the criminal justice system can, under certain circumstances, be beneficial and even therapeutic. This can only be accomplished with a sensitive and patient approach to the child and the child's family, and it cannot be correctly approached without the involvement of a therapist and an advocate from the criminal justice system.

Such an advocate in our system is the District Attorney's Victim-Witness Coordinator. The Victim-Witness Coordinator is available to first introduce the child to the criminal justice system. The coordinator is introduced to the child at the Center, in cases that are referred for criminal prosecution. This occurs after the initial interview session has been completed and after the child is in therapy.

The Victim-Witness Coordinator will continue contacts with the child even to the point of making a home visit. When appropriate, the child, family, or therapist may contribute to the decision on whether or not a case will be routed to the criminal justice system. If a criminal case is accepted' for prosecution, the Victim-Witness Coordinator introduces the child to the Assistant District Attorney responsible for prosecuting that case. This introduction occurs at the Children's Advocacy Center and is made after the assigned Assistant District Attorney has an opportunity to review the videotape of the initial interview session and has participated in team review of the case.

In cases referred for criminal prosecution, the Victim-Witness Coordinator will give the child pretrial tours of the Grand Jury Room and courtrooms. She also accompanies the child during the actual courtroom sessions.

Diversion Program

The District Attorney's Diversion Program has been designed primarily to aid the victim but also to aid the professionals, particularly the therapists, who become involved with the child, family, and offender. Many children should not be put in the position of having to testify against a father, stepfather, or any other family member. The diversion program is a method for getting offenders into treatment, when many of them will not participate in therapy unless forced to do so. But the program also recognizes that the offender should have to account for his behavior through the criminal justice system. Not all cases of child sexual abuse are appropriate for the diversion program.

The Diversion Program referral is made by the team at the review of the particular case involved. The offense charged is based on the fact situation described by the child. For example, it may be sodomy, sexual abuse, or rape. The offender is then informed by the District Attorney's Office that he has been officially charged with a specific act.

To qualify for the Diversion Program, the offender must admit his guilt. He is advised that before he can be accepted by the program he must undergo psychological evaluation by a qualified therapist. Other conditions may be imposed on the offender such as remaining away from the home of the child victim and family, maintaining steady employment, and having no other criminal charges filed against him.

If the offender is accepted into the Diversion Program, the initial charge is "suspended" for an indefinite period of time, and the offender is routed to therapy. He is then advised that if he successfully completes the program, he may then plead guilty to a misdemeanor sexual offense.

Future Developments

Staff members involved in the Children's Advocacy Center program are preparing a manual detailing the community approach to child sexual abuse. An evaluation plan has been developed by a local university sociologist. This will allow us to evaluate the benefits of this program to the child and families. The results of this evaluation are expected in July of 1986.

It is anticipated that our program will further refine the interview techniques and processes in these cases. The Center's staff and other agency participants have become specialized in this process. Participants in the program are developing a videotape interview guide which will stress a community approach to child sexual abuse. In addition, training programs will be conducted at the Center for the benefit of protective service workers, law enforcement detectives, prosecutors, therapists, and others.

Conclusion

Madison County's community approach to child sexual abuse has worked remarkably well. The child is now the central focus of the system, and all professionals interacting with the child consider the welfare of the child as the first priority. Professionals participating in this community approach also recognize that the offender must account for his or her behavior.

This coordinated approach has required that area professionals improve their skills. The flexibility, such as it is, of the criminal justice system is used to better accommodate the needs of the child. The current approach is designed, not only for the purposes of the criminal justice system, but has also been designed to finally provide justice to the child.

Referrals for criminal prosecution have increased dramatically in this area. Cases accepted for criminal prosecution have increased 500 percent from 1982 to 1984. During one week in late 1984, twelve children were taken into the courtroom in twelve different cases. The professionals involved in our system have determined that the child's participation in the criminal justice system can be very therapeutic.

The professionals participating in the community approach to child sexual abuse have recognized that many juvenile delinquents are running from child abuse and neglect. Consequently, a successful community approach to this problem cannot ignore those delinquents. Our community approach is now emphasizing the total involvement of the professionals who deal with children. We anticipate that within the next twelve months alternative delinquency programs will be established to allow therapists to become involved with the juvenile delinquents. Our entire juvenile system intake procedure is being redesigned to allow juvenile probation officers to spot victims of child abuse and neglect. Alternative sentencing programs are also being designed to allow more flexibility within the juvenile system.

I do not pretend to understand why child sexual abuse occurs. But, as District Attorney, I realize I have a responsibility and a desire to redesign the system which responds to the child-victims of this type of abuse. Through the mobilization and dedicated efforts of other professionals in my community, our system has changed. The Children's Advocacy Center is a model community approach that can and should be replicated throughout the country to improve the quality of response to the needs of the sexually abused child.

Senator DENTON. Our next witness is the Honorable H. Mark Kennedy, circuit court judge for the 15th Judicial Circuit in Montgomery and chairman of the children's trust fund. I will ask him at this time to come forward.

Judge Kennedy is a member of the American, State, and County bar associations. He is a member of the Committee on Legal Education and Admission to the Bar of the Alabama State Bar Association, the National Council of Juvenile and Family Court Judges. He is a graduate of the Judicial College of the University of Nevada. He is a chairman of the children's trust fund and was past chairman of the board of the Montgomery Area Family Violence Program.

Judge Kennedy was also instrumental in insuring the existence of the Sunshine Center in Montgomery which serves victims of child abuse. His work is of great importance and his observations will be of much use to the subcommittee. I welcome you Judge and remind you that your complete written statement will be placed in the record and ask you if you can take 10 minutes to summarize your testimony.

STATEMENT OF HON. H. MARK KENNEDY, CIRCUIT COURT JUDGE FOR THE 15TH JUDICIAL CIRCUIT IN MONTGOMERY COUNTY AND CHAIRMAN OF THE CHILDREN'S TRUST FUND

Judge KENNEDY. Senator Denton, on behalf of the members of the board of the children's trust fund for the State of Alabama we deem it a pleasure to be here to speak in support of S. 1156.

We hear a lot about public violence in America. It is the stuff that we read in headlines and it makes the nightly news. It's the stuff of task forces and national soul searching. It is easily identified and capable of being neatly tallied.

But what might be termed private violence, the cruelty exercised on those nearest most vulnerable and least able to protect themselves, women and children, is a nightmarish realm only beginning to be forthrightly explored.

One of the most violent places in society is also one of the most sanctified, our homes. It is in this private domain that 20 percent of all of our murders occur in this country. It is in the privacy of the home that 50 percent of the rapes in our country are committed. And it was in the privacy of the home that a little boy was found paralyzed and brain damaged with the words "I cried" branded on his chest.

The dividends that society reaps from the mutilation of the body and minds of innocents is devastating. Many rapists were sexually exploited as children. Eighty percent of the prison population in the State of Alabama report that they were abused as children. And children of battered women, accustomed to seeing family business conducted through violence, are prone to become battered wives and battering husbands.

Eighteen thousand children die yearly as a result of abuse and poverty in our country. In the past 24 hours 18 children have been killed at the hands of an abuser. In the past 12 months we have starved, beaten, verbally assaulted, neglected, or otherwise maltreated 2 million young Americans.

We in this country have wiped out the threat of many childhood diseases but have been unable to combat the greatest killer of infants under 1 year and the second greatest killer of toddlers, physical abuse. And those children who are fortunate enough to survive often become one of the numbers in the criminal justice statistical reports or social service caseload audits whose talents and potential are lost, with the public sector picking up the tab while the child picks up the pieces of his shattered life.

Our response in the past to the status of children and other victims of private violence has been less than sterling. In many police jurisdictions throughout the country a citizen may expect a more positive response and more immediate overt action on a report of a missing auto than a report of a missing child.

The legal system is probating known sex offenders and pedophiles with little or no supervision and often no mandated treatment or counseling. Many State governments require criminal background checks for many occupations, including correctional guards, jockeys, and employees of betting tracks and State police, but not for those individuals having supervision or disciplinary control over children in our day care industry.

Computer sex networks, easily accessible in the privacy of one's home with a computer, telephone, and access code provide a popular marketplace for offerings of sex with children. Underground publications offer for private sale a wide variety of pornographic snuff movies, where after submitting to sexual degradations, the child star is murdered.

In Alabama available statistics demonstrate that the number of abuse and neglect reports to the State department of pensions and security have risen from less than 1,000 for the year 1975 to over 28,000 in 1984. These statistics do not adequately demonstrate the total numbers of children who have been placed in crisis in the State due to the fact that a large number of incidences go unreported.

In 1983 the Alabama Legislature addressed the problem of child abuse and neglect by creating the children's trust fund. The fund is designed to provide matching grants for child abuse prevention programs throughout the State and to advocate for the rights of Alabama's youths. Since its inception the trust fund has received over $770,000 in public and private support and has just recently been notified of its eligibility to receive in excess of $170,000 in Federal challenge grant funds. With a broad base of support and with solid funding, the 14-member controlling board has begun the work of identifying and supporting child abuse prevention programs throughout our State.

Through the work of the children's trust fund, the State PTA, concerned legislators, and citizens, the State legislature enacted in its last session the most comprehensive package of child protection legislation in the Nation. When fully implemented these legislatively mandated programs and expanded rights will significantly enhance the quality of life for children in Alabama. Several of the bills in the package specifically address those issues addressed in the proposed amendment to chapter XIV of the Comprehensive Crime Control Act of 1984.

As stated in section 2 of the proposed amendment, in its findings and purposes, a child abuse victim seeking justice in the courtroom can often expect another assault, sometimes more vicious than the first. For this reason, many children as well as their parents are refusing to become involved in the process.

In a growing number of jurisdictions, however, children are being heard and believed. The right of children to testify before a court has long been recognized in our system, provided the court is satisfied the child as a witness knows the difference between right and wrong and is capable of self-expression. Many legal professionals, however, are realizing there is no valid correlation between truthfulness and age, and have become innovative in their approach to accommodating child witnesses as they face their accused.

In Alabama, pretaped videotaped testimony is now admissible in certain proceedings as is testimony through closed circuit television in order to protect the innocent victim. Anatomically correct dolls are becoming a popular tool for demonstrative evidence so that small children lacking in advanced verbal skills can physically demonstrate what happened to them.

Children have long been stigmatized when it comes to their credibility in assault cases. Recognizably, children have at times invented stories of abuse or sexual misconduct for a variety of reasons. More often, however, children are retracting true facts as being false, when placed under coercion by family members, perpetrators, and the system itself.

State and local governments must accept the challenge to protect the weak and vulnerable. The rights of dignity and fair play should extend in our legal system to those that are victimized as well as to those that are accused. The cloak of justice is broad enough to enfold those that seek retribution for the crimes committed against them.

Our system conceived by adults to protect adults has an obligation to abandon the prejudices that have historically existed against children. We have long recognized that our Constitution is colorblind and not gender-based. We must now move forward and demand that liberty and compassion know no constraints of age.

With the enactment of S. 1156, Congress will be doing more than providing encouragement to States to seek justice for their young, it will be setting a national policy standard that clearly delineates a positive position for the further protection of children in crisis.

Not long ago, I met a young man who was before my court for the purpose of being sentenced for the offense of theft of property in the second degree. In reviewing his pre-sentence investigation report, I discovered that he had been before juvenile authorities 22 times in 8 years. At 18, he stood before the court to be sentenced as an adult.

As I continued to review his report, I read the following: When he was seen by health officials in March 1973, he was observed to have an injury to his right eye, to be quite small for his age, and to have bruises of both his eyes and arm. When examined in July 1974 at the University Hospital in Birmingham, he was observed to have scars on his back, his right wrist, his left ankle, and the soles of both feet. He was underweight and anemic. He was given a double portion of food for 2 weeks, "which he attacked ferociously for approximately 2 weeks," and had gained 10 pounds upon his discharge from the hospital. When he was treated in October 1974 in therapeutic foster care, he was reported to act out homosexually and to continue acting out through mal-appropriate behavior and was considered a borderline psychotic.

It would be surprising if he did not have mental and emotional difficulty in that, in July 1975, he stated that his father "is much nicer (than his stepmother), and that he never did anything except occasionally throw him against the wall and to hit him and kick him." Again he stated that he had been forced to have oral sex with his father.

Investigations revealed to the satisfaction of all authorities at the time that his stepmother had made him stand on a heated floor furnace until the bottom of both feet were badly burned with visible scarring; had burned his lip with hot oatmeal; had made him walk to school in cold weather barefooted; had pushed his right hand into a fire; had poured hot scalding water on his foot and leg because he lost a note from his teacher; had stuck her finger with Drano on it in his eye resulting in permanent damage; had held him upside down and dropped him on his head onto a concrete patio; had made him drink a bottle of Tabasco sauce for running away; had made him eat a box of salt; had made him steal clothes; had bloodied his lip and whipped him with a 2 by 4; had made him drink beer until he got drunk and fell out of his highchair bursting his forehead and leaving a visible scar; and had stuffed B.B.'s in his ears for punishment causing hearing impairment in both ears.

Those perpetrators of these unspeakable crimes against this young man were never brought to justice. They still walk the streets of our communities having never even been charged. I asked myself on that day who was the true victim of crime. Where was our system when this young man needed us and where had we failed him?

As that young man was lead from the courtroom that day, I made a promise to him that I would do what small part that I could to try to prevent the same tragedy from occurring, that I would do what I could to encourage changes in the system to make it more sensitive to the needs of victimized children.

As chairman of the children's trust fund, I am here today to, as part of that committment, to offer my support of S. 1156, for through it some may be encouraged to accept the challenge and to save a child much like that young man who was so needlessly lost.

Children in their innocence and constrained affections deserve our best, and our private violence can no longer become a conspiracy of silence.

Senator **Denton**. Your testimony was eloquent, Judge, and also very moving. I thought I had seen the root of the problem. I have dragged myself through scores of hearings related to things like this because of my subcommittee chairmanship of the Aging, Family and Human Services, as well as my membership on the Juvenile Justice Subcommittee, but I never heard anything specifically as horrible as the example you noted. It doesn't particularly surprise me that there are underground publications for private sale, a wide variety of them showing children after having submitted to sexual degradation being murdered. That is the kind of commercialization that we must prevent.

As you may or may not know, computer porn is a subject I have had to deal with—particularly child abuse computer communications. I have recently held hearings on cable porn and dial-a-porn. It's discouraging to have good men and women thinking that it's a victimless crime whereas one psychiatrist, one sociologist, one statistician after another, one district attorney after another, any experienced person in this field knows that massive exposure to pornography has a number of bad effects. It doesn't contribute to the pursuit of happiness.

I'm not trying to stop folks from indulging in things that are pleasurable, but I am trying to stop the rights of us all to pursue happiness by abusing others.

We do have Covenant House in New York today, and yet the streets of downtown New York are covered with children, runaways who have either been drawn there or taken there. They are being rented by the hour, usually young males by adult males, for given amounts of money depending on what kind of equipment they are going to use on the child, such as whips, chains, that sort of thing. This is going on all the time.

A man who was our former Secretary of the Treasury, William Simon, a pretty good guy—I thought he was principally an economist—spent all Christmas Eve, all Christmas, up until the noon of Christmas Day, with his wife and has large family—I forgot whether he had seven or eight children—and they had ministered to those children there relieving Father Ritter who runs Covenant House in New York.

And to hear Father Ritter testify about how they don't try to get those kids straight again, they don't try to rehabilitate them, their principal purpose is simply to keep them from committing suicide. And I offer that just as sort of a match for some of the appalling stories that you have told us this morning which have added much to my own perspective on the matter.

I think the more we look into it the less we will find that its good for us, although it might be very, very attractive. Massive exposure to it is not good and is connected with the subject we are dealing with today. Your work with the children's trust fund is extremely admirable. You have brought up a number of points that will help us with our pursuit of this matter.

As a trial court judge have you had an occasion to rule on a defense motion challenging the constitutionality of the rules of evidence modified in child abuse cases? If you have not so ruled and if you feel that it would be appropriate, could you tell us what your review of such constitutional challenges might be?

Judge **Kennedy**. In the new package of legislation that was recently enacted by the Alabama State Legislature, there are several bills that would affect courtroom procedure in the handling of child abuse victims in the courtroom. Those have not been, even though they are in place, they have not been used in my particular court in that I have not had the opportunity to try a lot of these cases since the enactment of that legislation.

Obviously the videotaping bill and the closed circuit bill would be probably the ones that would first be challenged constitutionally, on the same grounds basically that you were discussing with Mr. Cramer, and that is on the sixth amendment right to confrontation. The bill that was introduced and passed was formulated in conjunction with the National Center for Missing and Exploited Children in Washington.

And hopefully we were able to draw the best in those bills that had already substantially withstood a constitutional challenge, and we feel that we have written a bill that would guarantee the rights of the accused to have adequate confrontation. There is nothing in the Constitution that says that the right to the confrontation of the accused must be 2 feet, 3 feet or within the same room. It simply says that the defendant has the right to confront his accuser.

And we feel that with removing those constraints that technology has removed, that you can interpret those issues of confrontation meaning maybe not necessarily physical confrontation in a courtroom, but confrontation through electronic means. We do feel that that is going to be an issue that will be addressed. But as chairman of the children's trust fund and not as a judge, I feel that those will be met and as an attorney I feel that we have drawn a good bill that will pass a constitutional challenge.

Senator **Denton**. The children's trust fund is designed to support child abuse prevention programs, and that prevention is to avoid a breakdown in parent-child relationships, and we commend you for your work in that direction. Do you see the stated purposes of my bill in minimizing the additional trauma of the child victim and improving the chances of successful prosecution as falling within the general objectives of your trust fund or complementing those objectives?

Judge **Kennedy**. The children's trust fund was designed as a prevention modality to break that cycle of abuse and end the cycle of abuse before it occurs. But in our State our trust fund board has given prevention a very broad definition. We are not going to turn our backs on any child in crisis whether they have been abused or whether they are in crisis or about to be in crisis.

There is a terrible cycle in an abusive situation and no matter how much money we spend, no matter how many programs we implement, until we have reached those children and provided them with some protective services, we are not going to be successful. And in your proposed amendment, in dealing with the way we handle children within the system themselves, if a child cannot turn to his parents, who oftentimes are the abusers, then who can he turn to except the system?

And that we must insure that the system is going to be compassionate and is going to protect the rights of the defendant, but also is going to reach down and lend a helping hand to that child who has not one to protect them if we are unable to do so. So many of the bills that were passed in our legislative session speak directly to those issues that are raised in S. 1156. And those are bills that the trust fund is supportive of. And we feel that it's going to add impetus in our State and to encourage other States to enact legislation much like we have.

Senator **Denton**. Would you envision the Children's Trust Fund as the logical administrator of funds that come down through the provisions of my bill?

Judge **Kennedy**. I think that that would be a possibility. It would certainly be a challenge that we would accept. There are other State agencies obviously that would be just as well equipped. But I think the Children's Trust Fund could be one conduit through which these funds could be administered. We are presently administering grants throughout the State to child abuse prevention programs, and we have a network set up all over the State through local councils and concerned citizens. Many of you who are here today at this hearing are members of our local council in the Birmingham area. So it would certainly be a possibility that could be considered.

Senator **Denton**. Do you believe an average member of a jury has the ability to separate fact from fantasy in the testimony of a child victim?

Judge **Kennedy**. I think, like Mr. Cramer says, most adults do not want to believe that we do the things that we do to children. But I believe also, from having been a trial judge for several years, that the system itself oftentimes affects the way jurors think. And oftentimes the way that we handle those children when they are in the courtroom will have a direct impact on whether or not the jury is going to be open and believing.

Obviously whether or not a jury believes a child witness is up to the jury. They are the factfinders, and they must make that decision. I don't believe that we are trying to influence their decision by trying to make a child more comfortable. But at the same time we cannot expect a 5-year-old or a 6-year-old or even a 10-year-old to get on the stand and face a man sitting, as you are sitting, in a black robe, face 12 strangers over here and speak straight out of a biology textbook.

We believe, or I believe that if we allow children to testify in an unthreatening situation and allow the jurors to see a child in a comfortable setting and one in which he is not intimidated, that jurors will have a better opportunity to make that determination of whether or not they are going to believe that child.

Senator **Denton**. Just to make my own philosophical position generally clear for the record, in terms of institutions, I'm very confident that the family, a normal functioning family—and I underline normal, I guess, the traditional family unit, is the basic social unit of any nation. And I see the Government as being by the consent of the governed. And today perhaps overly intrusive into family matters.

Some of the textbook orientation, it just so happens I believe that families ought to have more cognizance and input into the values passed. There is the sex education with Government funds. I would rather see the parents more involved in that. People who happen to be married, people who are forfeiting out on the rights to be called parents. They are not rearing their children.

And we have a lot of influences today which encourage them to regard children as, rather than beloved gifts, as inconveniences and harassments to their pursuit of what they consider pleasure. In other words, I regard these as phenomenal families. Granted they are growing in number, and we have got to find, I think, first basically rather than just treating the symptoms of these children that are being hurt, let's try to be a little more honest with ourselves in finding out what is comprising the causes which cause people to become such animals.

I think the gentleman has my thrust. So, you know, really there is a twin task that is before us. And it's not very popular to pursue it sometimes. I just want to say I don't regard families as the problem. I regard problem families as a problem.

In your article entitled, "Sexual Abuse, a Conspiracy of Silence" which was published in the January 1985 edition of the Alabama Lawyer, you note that "Many legal professionals are realizing there is no valid correlation between truthfulness and age and have become innovative in their approach to accompanying the child witnesses when they face the accused." Would you give us some examples of these innovative testifying techniques other than those you may have already mentioned?

Judge Kennedy. In the pending legislation that was introduced that some was ultimately passed, one thing that was attempted to do was to remove age constraints from the testimony of children as witnesses. In Alabama now a judge has the right to determine whether or not a child is capable of testifying based on his age and his demeanor. This particular bill which was unsuccessful, it was taken out in its final capacity, would have removed that right from the judge and it would have allowed a child to testify. A judge could not refuse to allow a child to testify because of his age. And it would have allowed the jury to determine whether or not that child was capable of telling the truth.

We have on occasion in my court allowed children to testify from the laps of their parents. We have allowed children to testify from the laps of social workers. There have been courts that have allowed children to diagram on the board, use anatomically correct dolls, which have now been stautorily approved in our State.

There have been children who have testifed seated at counsel table, under the counsel table. And even though these may seem a little bizarre for what we generally consider to be a rather normal setting in a courtroom, the whole purpose of a court in my judgment is to seek justice. And if you can seek justice as good from a child just as well if he is under a table than you can on a witness stand, and that child is more comfortable and it's not going to make a mockery out of the court and it's not going to violate the rights of the defendant, then I don't understand why a little common sense and a little compassion can't join with the judge as he sits on the bench deciding these most sensitive issues.

Senator Denton. Well, we intend to try to help you in the Federal Government to get that common sense and compassion engendered in terms of some modifications. And in that respect, as the present courts take careful precautions to safeguard the true identity of juvenile offenders, what would be wrong with similar precautions being taken to prevent revealing the name of identity of a child victim and the exploitive spectacle involved in this?

Judge Kennedy. We now have legislation in Alabama which was most recently passed in this package which now seals the records of criminal cases in which children are the victims of certain types of crimes. If you are a juvenile offender your name is not held for public inspection. But if you are a juvenile victim, you are a victim, your name was publicly disseminated.

Now in Alabama those records are kept confidential. And the circuit clerks who handle the files in our courts here in Alabama are now prohibited from disseminating that information.

[Prepared statement follows:]

PREPARED STATEMENT OF H. MARK KENNEDY*

We hear a great deal about public violence in America. It is the stuff of headlines, lead stories on network news, task forces and national soul searching. It is easily identified and capable of being neatly tallied. What might be termed private violence, a cruelty exercised on those nearest, most vulnerable, least able to protect themselves - women and children - is a nightmarish realm only beginning to be forthrightly explored.

One of the most violent places in society is also one of the most sanctified - the home. It is in this private domain that twenty percent of all murders occur. It is in the privacy of the home that fifty percent of the rapes in our country are committed. It was in the home that a little boy was found paralyzed and brain damaged with the words "I cried" branded on his chest.

The dividends society reaps from the mutilation and the bodies and minds of innocents is devastating. Many rapists were sexually exploited as children. Eighty percent of the prison population in the State of Alabama report they were abused as children. Children of battered women accustomed to seeing family business conducted through violence are prone to become battered wives and battering husbands. Sexually abused males have a predisposition to pedophilia while sexually abused females show a greater proclivity to sexual promiscuity.

As the dirty secrets are no longer being kept and the victims of violence are talking to police, prosecutors, counselors, friends and one another, their stories bespeak terror and their numbers are chilling.

Eighteen thousand children die yearly as a result of abuse and poverty. In the past twenty-four hours, eighteen children have been killed at the hands of an abuser. In the past twelve months, we have starved, beaten, verbally assaulted, neglected or otherwise maltreated two million young Americans. We have wiped out the threat of many childhood diseases, but have been unable to combat the greatest killer of infants under one year and the second greatest killer of toddlers - physical abuse.

The average age of children reported abused and neglected is seven and one-half years of age, and although preschool children represent twenty-eight percent of total child population, they account for seventy-nine percent of all abuse fatalities. Those children that are fortunate enough to survive, often become one of the numbers in criminal justice statistical reports or social service caseload audits whose talents and potential are lost, with the public secter picking up the tab while the child picks up the pieces of his shattered life.

Contemporary society's response in the past to the status of children and other victims of private violence has been less than sterling. In many police jurisdictions throughout the country, a citizen may expect a more positive response and more immediate overt action on a report of a missing auto than a report of a missing child. The legal system is probating known sex offenders and pedophiles with little or no supervision and often no mandated treatment or counselling. Many state governments require criminal background checks for many occupations including correctional guards, jockeys and employees of betting tracks and state police, but not for those individuals having supervision or disciplinary control over children in the day care industry.

Computer sex networks, easily accessible in the privacy of ones home with a computer, telephone and access code provide a popular marketplace for offerings of sex with children. Underground publications offer for private sale, a wide variety of pornographic snuff movies - where after submitting to sexual degradations, the child star is murdered.

In Alabama, available statistics demonstrate that the number of abuse and neglect reports to the State Department of Pensions & Security have risen from less than one thousand for the year 1975 to over twenty eight thousand in 1984. These statistics do not adequately demonstrate the total numbers of children who have been placed in crisis in the State due to the fact that a large number of incidences go unreported.

Our state's victimized children are haunted by fears and resentments that will be with them for the rest of their lives. Intervention is necessary to break the cycle of abuse, and prevention holds out hope for a future in which children are valued and nurtured and where families in trouble can be offered help before they are pushed to the desperation of child abuse.

In 1983, the Alabama Legislature addressed the problem of child abuse and neglect by creating the Children's Trust Fund (Act No. 83-735). The Fund is designed to provide matching grants to child abuse prevention programs throughout the State, and to advocate for the rights of Alabama's youth. Since its inception, the Trust Fund has received over seven hundred and seventy thousand dollars in public and private support and has just recently been notified of its eligibility to receive in excess of one hundred and seventy thousand dollars in federal Challenge Grant Funds. With a broad base of support and with solid funding, the fourteen member controlling board has begun the work of identifying and supporting prevention programs throughout the State.

Through the work of the Children's Trust Fund, the State PTA, and concerned legislators and citizens, the State Legislature enacted in its last session the most comprehensive package of child protection legislation in the nation. When fully implemented, these legislatively mandated programs and expanded rights will significantly enhance the quality of life for children in our State. Several of the bills in the package specifically address those issues addressed in the proposed amendment to Chapter XIV of the Comprehensive Crime Control Act of 1984 (Senate Bill 1156).

As stated in Section 2 (a) of Senator Denton's proposed amendment, in its findings and purposes, a child abuse victim seeking justice in the courtroom can often expect another assault, sometimes more vicious than the first. For this reason, many children as well as their parents are refusing to become involved in the process.

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> When he was seen by health officials in March of 1973, he was observed to have an injury to his right eye, to be quite small for his age, and to have bruises of both his eyes and arm. When examined in July, 1974, at the University Hospital in Birmingham, he was observed to have scars on his back, his right wrist, his left ankle and the soles of both feet. He was underweight and anemic. He was given a double portion of food for two weeks, "which he attacked ferociously for approximately two weeks" and had gained 10 pounds upon his discharge from the hospital. When he was treated in October of 1974 in theraputic foster care, he was reported to act out homosexually and to continue acting out through mal appropriate behavior and was considered a borderline psychotic. It would be surprising if he did not have mental and emotional difficulty in that in July, 1975, he stated that his father "is much nicer (than his step-mother), and that he never did anything except occasionally throw him against the wall and to hit him and kick him." Again he stated that he had been forced to have oral sex with his father, but years later recanted that statement. Investigations revealed to the satisfaction of all authorities at the time that his step-mother had made him to stand on a heated floor furnace until the bottom of both feet were badly burned with visible scarring; had burned his lip with hot oatmeal; had made him walk to school in cold weather barefooted; had pushed his right hand into a fire; had poured hot scalding water on his foot and leg because he lost a note from his teacher; had stuck her finger with Draino on it in his eye resulting in permanent damage; had held him upside down and dropped him on his head onto a concrete patio; had made him drink a bottle of tobasco sauce for running away; had made him eat a box of salt; had made him steal clothes; had blooded his lip and whipped him with a 2 x 4; had made him drink beer until he got drunk and fell out of his highchair bursting his forehead and leaving a visible scar; and had stuffed BB's in his ear for punishment causing hearing impairment in both ears.

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I am here today as part of that commitment to offer my support to Senate Bill 1156, for through it, some may be encouraged to accept the challenge and save a child much like that young man who was so needlessly lost.

Children in their innocence and constrained affections deserve our best - - our private violence can no longer be a conspiracy of silence.

JUDGE H. MARK KENNEDY

Judge Mark Kennedy was born in Greenville, Alabama. He attended public schools in that city then attended Auburn University, graduating in 1973 with a Bachelor of Arts Degree in Pre Law. In 1977, Judge Kennedy was graduated cum laude from Cumberland School of Law receiving a Juris Doctorate Degree.

Judge Kennedy is a former District Judge and a Family Court Judge of Montgomery County and since 1983 has been serving as a Circuit Judge for the Fifteenth Judicial Circuit of Montgomery.

Judge Kennedy is a member of the American, State and County Bar Associations. He is a member of the Committee on Legal Education and Admission to the Bar of the Alabama State Bar Association, the National Council of Juvenile and Family Court Judges. He is a graduate of the Judicial College of the University of Nevada.

Judge Kennedy serves on the Advisory Board to the Troy State University Graduate School of Nursing and on the Board of Directors of the Alabama YMCA Youth Legislature. He is Chairman of the Children's Trust Fund Board for the State of Alabama and is Past Chairman of the Board of Directors of the Montgomery Area Family Violence Program. Judge Kennedy is an adjunct professor at Troy State University and Auburn University in Montgomery. He is a member of the Montgomery Kiwanis Club and he and his family attend St. James United Methodist Church.

Judge Kennedy is married to the former Peggy Wallace of Montgomery and they have one son, Leigh.

Senator **Denton**. Thank you very much, Judge Kennedy. And we will stay in close touch with you and we hope that you feel that you have on open channel to help us. Thank you for your work in this.

I will now call our next witness, Dr. Michael C. Roberts, associate professor of psychology at the University of Alabama. Good morning again, Dr. Roberts.

Dr. Roberts has been with the university since 1978, with his present rank of associate professor since 1982. His specialty falls in the area of child psychology as indicated by the extensive list of extended works, publications, presentations, and research grants by him on the subject. I would like to place Dr. Roberts' entire vita in the record at this time without objection.

I would be remiss were I not to mention that Dr. Roberts' committment to children extends far beyond the classroom, as indicated by his consultantship with Genesis House, a group home in Tuscaloosa for delinquent boys, which is sponsored by the Methodist Church. He will be testifying today on behalf of the Society of Pediatric Psychology of American Psychological Association as previously mentioned.

Permit me Dr. Roberts, to commend you for the fine work you are doing on behalf of our children both in and out of the classroom. I welcome you to today's hearings. Your complete statement in writing will be placed in the record, and I ask you to summarize your oral statement in 10 minutes.

STATEMENT OF MICHAEL C. ROBERTS, PH.D., ASSOCIATE PROFESSOR OF PSYCHOLOGY AT THE UNIVERSITY OF ALABAMA

Dr. **Roberts**. Mr. Chairman, I want to thank you for the opportunity to testify before you on this important issue of protecting child witnesses in child abuse cases. I'm testifying on behalf of the Society of Pediatric Psychology of the American Psychological Association. I should note that I am a psychologist.

I have provided the committee with a formal statement representing the official views on behalf of the Society of Pediatric Psychology, which is a group of psychologists who clinically practice in pediatric settings, who conduct research on applications of psychology to children's problems presenting in a health setting, and who have been involved in child abuse issues for a long time.

In my oral presentation I want to abstract the main parts of the statement to emphasize the important aspects of the bill you have introduced to the Senate on child victim witness protection, particularly in sexual abuse situations.

Pediatric psychologists and mental health professionals generally are concerned with assisting children along their passage into adulthood by facilitating developmental, physical, mental, and social growth. In their work, health professionals all too frequently encounter children who are faced with obstacles to normal development. Child abuse, and particularly sexual abuse, is being recognized now as a trauma of significant proportions. In alliance with colleagues in mental health, medicine, and law enforcement, we strongly support efforts to humanize the dehumanizing sequence which begins with the abusive act.

In this statement we will address the following issue. First, we will discuss the potential for psychological trauma resulting from children's involvement in the prosecution of child sexual abuse cases. Second, we will outline several innovations designed to reduce this trauma, including many of the techniques specifically noted in the proposed S. 1156 that you have introduced, Mr. Chairman, entitled the Child Victim Witness Protection Act of 1985. We encourage the development and implementation of these innovative techniques.

Sexual abuse is a social problem with physical, psychological and legal ramifications. The sexually abusive situation is an exceedingly complex one. The trauma of sexual abuse is certainly bad enough on the child, but the needs of society for prosecution of offenders and protection of the child victim and other potential victims often add to that trauma.

The needs of the sexually abused child include caring and understanding, therapy, support for the family, and an opportunity for returning to a nondisruptive, normal developmental pathway. Occasionally the child may also feel a sense of justice or vindication over the perpetrator, but this feeling is more for the society as a whole. The requirements or prosecution to achieve this societal sense of justice conflict at times with the needs of the child victim to deal psychologically with the abuse trauma, and then to regain regular developmental activities.

Not all children will be traumatized by the experience of testifying. On the other hand, not all abused children are capable of feeling vindicated by the legal system. The potential is always present for further injury to these particularly vulnerable children. We know of far too many cases where child victims have been interviewed repeatedly by different adults, subjected to emotionally arousing and confusing procedures by poorly trained and insensitive professionals. And they have undergone lengthy delays and continuances in legal hearings.

These child victims have been forced to repeatedly relive the abusive episode and not allowed to put the trauma behind them in order to move along the developmental path. Some children have verbalized confusion over the judicial system that appears to punish the victim by the very process designed to protect and vindicate them. Children are removed from homes. They are deprived of emotional support. They may sense personal responsibility for the abuse and feel guilty for family disruptions.

Their cases may get continued for over a year. Their testimony may be required for as many as 20 times, often with detailed recall of the events each time. And they may have to confront the offender directly. This need not be.

In many locales, including Mr. Cramer's program in Huntsville, teams are developing to include law enforcement, child protection workers, prosecutors, mental health professionals, and physicians. These teams are coordinating their efforts and utilizing knowledge of child development and the dynamics of sexual abuse to meet the two goals: First, there is the child's need for sensitive support, therapy, and protection. Second, there is society's need to deal with the offender.

Psychologists, as health care professionals concerned with the welfare of children, endorse the development and evaluation of such innovative techniques to reduce potential trauma to the sexual abuse victim. We are not alone in this endorsement; many concerned professionals of all disciplines have advanced innovative proposals we find conducive to children's welfare and development.

These innovations, some suggested in the proposed bill under consideration, can lead to considerable improvement in the way in which children and their families are handled in this troublesome process. We want to discuss these innovations and to encourage further consideration of them through adoption of Federal legislation.

First, the concept of interdisciplinary teams is an important one for responding to the child sexual abuse situation. These teams reflect a concern for society's requirements for justice, but their development also indicates a concern for children's special needs. These teams can foster greater understanding of the child victim and his or her family. Legal investigations need not be as psychologically traumatic as they have been; children can be approached in ways that are sensitive to their special status and to their mental health needs.

Second, these teams, by including various professionals, can improve the coordination of services provided by various agencies involved in this complex situation. In many locales services are fragmented and, unfortunately, sometimes nonexistent. Teams can foster coordination and strive toward the two goals noted earlier: Assist the child and family and prepare for prosecution if necessary.

Third, we agree there is a strong need for improved training of all professionals specializing in sexual abuse cases, including lawyers, judges, police, social workers, psychologists, psychiatrists, physicians, and others. This training must be specially available since typical professional training is inadequte for the unique dynamics of sexual abuse. That is, typical professional training, even of those disciplines with licenses or certification, does not provide the increased knowledge and skills demanded in these circumstances. This is as true of the mental and physical health professions as it is of law and law enforcement.

In addition to the requirements of special training in each discipline, there are some common training components we suggest would be beneifical for all involved. First, improved interviewing techniques need to be taught to team members. Interviewing can be enhanced through the use of words and concepts appropriate to the developmental level of the child. Thus, training to provide knowledge of child development processes can help team members do their jobs.

Both therapeutic and investigatory goals can be fostered through sensitivity to the child victim's developmental stage in the social, verbal, cognitive, emotional, and moral thinking domains. Specialized knowledge in the dynamics of sexual abuse will also be required. Through the improved training components of this bill, the interdisciplinary teams can provide sensitive, emotionally supportive, and developmentally appropriate services.

Fourth, in order to minimize the number of interviews and investigatory personnel interrogating sexual abuse victims, we further encouarge considertion of videotaping of initial interviews and possibly for introduction of evidence in legal hearings in lieu of the child's presence. These are not only psychological issues, but legal ones with constitutional ramifications.

To the extent that these techniques may be necessary for the protection of the child victim and ensure conscientious prosecution, then, from a psychological perspective they are worth considering. The safeguards on the use of these special techniques must meet constitutional criteria, but these become legal, not psychological questions.

Of paramount importance, in our view, is the child's welfare. Workers in the field have been finding that at least half of the children now being referred for sexual abuses are under 6 years of age. Consequently, videotaping and changed hearsay evidence rules may be essential in this circumstance because these aged children traditionally have been excluded as incompetent witnesses.

Fifth, judges and prosecutors need to make legal procedures and the courtroom more conducive to the child's psychological welfare. They need to minimize procedural delays, so that cases do not drag on indefinitely. Courts also need to arrange for special scheduling of children's court appearances when testimony is required, because children have special needs for rest and activity and for psychological preparation.

Additionally, an emotionally supportive person should be permitted to be present with the child during all sessions to explain the process and to provide continuity and familiarity. Judges need guidance in such matters as how to rephrase questions, how to recognize indications of stress, fatigue, and confusion, and how to respond to a child's perception or intimidation. Special allowances in court would have the goal of improving the child's comfort and lessening potential fear and embarrassment, so that additional trauma is not foisted on the vulnerable child.

Sixth, judges and prosecutors should become sensitive to the needs of the child within the family. This is particularly true in the vast majority of cases where the offender is a relative. Therapy and support need to be provided the child and family; therapy should be available for the offender as well. Careful consideration should be given to minimize the disruption of the family.

Finally, we urge formal recognition of what is an underlying assumption of S. 1156 and many efforts in the legal realm: Children are competent to testify if approached through sensitive questioning using age-appropriate words and concepts. Before this Subcommittee on Juvenile Justice last year, Gary Melton, a psychologist, attended directly to this point. Children can provide valid testimony. We need to find the best way for this to occur.

We would like to see one component added to this bill encouraging the States to arrange for evaluation of the impact of the innovations made. The current evidence is minimally present about the total effect of preventing further trauma. However, enough intuitive and experiential support is available to warrant implementation of the bill's facets. S. 1156 does provide a rather unique opportunity to not only encourage innovation, but also to evaluate the changes.

We would also like to comment on the innovative funding mechanism for encouraging States to develop these programs. The use of the Crime Victim's Fund seems particularly appropriate for aiding children of sexual abuse. This bill does not add any imposition on the States or the Federal taxpayers while providing an opportunity to help children move past their traumatic circumstances.

As professionals interested in the development and welfare of children, the Society of Pediatric Psychology and the American Psychological Association want to state appreciation for the invitation to comment on the general issues involved in sexual abuse and, in particular, on the Child Victim Witness Protection Act that you have introduced.

Senator DENTON. Dr. Roberts, your testimony is comprehensive and helpful. To make sure I have got your general five points, you do endorse the concept of interdisciplinary teams, the coordination of services, and you probably would agree that that would be best done from the child's point of view at one point that is supportive of the child in terms of the environment there.

You want more training for all professionals, whatever professional role they fill, because in the particular subject area here, sexual abuse, they simply are not that well informed as they go through the training.

You would work on minimizing the number of interviews and personnel interrogating the children. You want to make those procedures more conducive to the child's psychological welfare, and you have given the examples of an emotionally supportive person being there all the time, knocking off these long procedural delays in the courts.

Sixth, you want those involved, the judges and the prosecutors to become sensitive to the needs of the child within the family. And you bring up several points that have not been brought up before, with which I totally concur, and one of them in particular. You say therapy and support need to be provided to the child and the family. And then you say therapy should be available for the offender as well. I agree with that.

Many of these people are what you might properly call sick. And you can't always treat a sick person in the same manner as you should treat one who is perfectly mentally competent. That is the difference between the way we treated the guy who shot the President of the United States, Ronald Reagan.

I would like to remove the influences which tend to make those people sick. I would like to remove the commercialization of them and the permissiveness which too often attends the liberal—if I may use that word, because I don't think this is a liberal-conservative problem. I think it's just a commonsense, American, human problem. And I greatly applaud the way Alabama has been so realistic and bipartisan about the way we are working on this.

You are emphasizing that children are competent to testify if we can find the sensitive questions, techniques, and appropriate words and concepts, then that they can afford valid testimony. The novel, an extra thing that you have represented, is encouraging the

States to arrange for evaluation of the impact of the innovations made. And as we make changes, evaluate those changes.

We are going to have probably different approaches from different States that are similar but not identical. And they will have met the suggested criteria for eligibility. But nonetheless, we will try, as you recommend, to find the best, not just the good ways—the best ways and leave some prudence in permitting discretionary use of the ones that seem to be the best among those best.

We will be in close touch with you too, sir, as we continue with this and we want to express our admiration for what you have already done.

You mentioned that it does the child good to go through the court process, or it can do it good if the child has a feeling that he has rid himself of something that had been confined within him, a resentment and perhaps a self-consciousness, even a self-guilt, that he might feel some measure of justice or—the word revenge isn't quite right—over the defendant if found guilty. But you seem to concur with us that the possibility of those healthy results in the deterrence of more child abuse is better gained if we modify the current court setting.

Dr. **Roberts**. Certainly, Senator, I think that some children are capable of feeling vindicated by the system; certainly older children who have the process explained to them. Many of the younger children just do not have the ability to comprehend justice or the system that they are dealing with.

But more importantly, regardless of those feelings, I think if we can let the children move beyond the abuse and they need to testify so that they can regain normal activities, perhaps we can prevent further trauma and maybe prevent later involvement of those children in judicial hearings as Judge Kennedy was mentioning.

Senator **Denton**. Well, since the child abuse practice is increasing, and I believe there is incontrovertible evidence to support that, and other sexual crimes are increasing, I think that the State pursues the causes, the environmental or commercial or whatever conditions that exist which maybe the government at the State or local level can address.

There is commercialization, for example, of obscenity going on against the law, against Supreme Court rulings because of an attitude, an apathetic attitude making it rather unattractive for attorneys to try to persevere in prosecutions. And while any one of those obscenities commercialized may not be something that we should all get excited about, I have been convinced as a result of the perspective obtained from these hearings over and over that we are permitting some negative influences, some harmful influences on ourselves that are not only against the law, but harmful to our society.

Dr. **Roberts**. Well, I think the sexual abuse situation, in particular, is very complex, and a number of factors feed into it. We really haven't identified all the factors that are there so that we can start working on them to prevent sexual abuse. I certainly think that prevention is going to be the way in which we can, not only avoid the initial trauma, but the later testimony of the child as well. If we can identify preventive efforts that are successful, then they are going to be very complex, as is the problem, and you will have to have a multitude of components in those prevention efforts.

Senator **Denton**. We have found, for your information, that people who are involved in sex crimes are very frequently possessed of great volumes of pornography, that they have become perhaps sick on the subject. And the deviance is no longer, you know, what you might call normal sexual indulgence that has fallen into a less commercially advantageous category, and there is more and more of getting beyond one kick to another, proceeding from one thing that is forbidden to another to another that is even more unspeakable. So there is a connection, I think, between trying to observe some kind of moral code and not trying, and essentially human philosophy denies that.

Dr. Roberts, all too often a child's credibility or competency to testify is questioned due to a failure to understand adequately that child's account within the context of normal developmental expectations, and the child's complaint and the child's behavior are seen as unlikely because the individual assessing credibility is applying adult standards and adult reasoning to the situation.

What do you think a jury of adults is capable of? Can they be made to understand the child's allegation within the context of that child's developmental level?

Dr. **Roberts**. I certainly think so. I think it behooves the judges and the prosecutors to educate the jurors in what they know about developmental trends, to explain that they have to use age-appropriate words or concepts, and maybe even have to bring in expert witnesses on child development to explain what a child can testify to and what they cannot.

We know that children's memories, and their ability to recall memory facts are really no less faulty or erroneous than adults in testifying. And yet we naturally assume that adults are competent witnesses. I think if children are approached in age-appropriate ways, they can remember events and facts very concretely. For example, I have noted this in several cases where a statement was given to the child, "he took you to his house," and the child said "no." It required the prosecutor to get back up and say "he took you to his apartment," because the child knew the difference and would not recognize the abstraction that a house could be an apartment, but the child remembered exactly it was an apartment and not a house.

So it calls incredibility on to the children when they use their very concrete memories. In another case I know of a child when—the statement was asked "did you put your mouth on this man's penis, and the child said "no." Everybody was very confused, and they thought, well, there goes the case. They rephrased the question, "Did he put his penis in your mouth," and the child said "yes." The child recognized the difference between his volitional act and what the other person did.

So I think that if we recognize that there are wording differences, if we recognize that children can be approached in special ways, I really think we will find that they are no less competent than anybody else. And I think every parent has maybe experienced this when they take their child shopping. Often the best way to find your car in the parking lot is to have your child refind it, because they look at things and remember things that we don't see as adults.

Senator **Denton**. Dr. Roberts, once sexual abuse is disclosed, action should be taken to protect the child, to disrupt the ongoing flow of events so as to help insure that re-abuse will not take place while the perpetrator is getting help to control his behavior. The action usually takes the form of removing the child from the home. However, such removal disrupts the child's life, deprives that child of the emotional support he or she needs most at the stressful time of disclosure of the abuse, and can communicate to the child that he or she is responsible for the sexual abuse.

How can we best protect the victim from further abuse without damaging that child psychologically?

Dr. **Roberts**. Well, I think in some cases it's appropriate for the children to be removed. But whenever possible I think it would be better for the child to stay in familiar settings where they have emotionally supportive people around. All too often the offender gets to stay in the familiar setting and the child feels punished, because they have been removed to foster care or a shelter of some sort.

The problem that comes in is that many times families are very disrupted by this process, not just by the physically actually moving the child, but confusion over the episode. And parents, even the nonoffending parents are often caught up in their own emotions. They can't provide adequate support to the child in some instances.

Oftentimes we find that nonoffending parents may blame the child for the disruption, blame the child for the act, and that is not going to be conducive to the child's welfare. In some cases the parent, who is nonoffending, actually acquiesced in the abuse in some way.

But I think that for the most part, we should find ways of strengthening the families when nonoffending parents were not involved, when parents can provide the emotional support. I think that, yes, they should stay within the family, because of the continuity in other areas. But I think that, as in the bill that you propose, that the structure needs to be present for external supports to be available for all children.

Senator **Denton**. Dr. Roberts, one of the suggested procedures in S. 1156 which would minimize additional trauma to the child victim would include providing for a support person to the child victim prior to and during the course of any legal or administrative proceeding to protect the interests of that child. In the past, it was believed that the attorneys representing the agency or the parents, as well as the judge, could adequately represent the child's interests.

My question is this: In a case of intrafamily abuse, do you believe the nonoffending parents can, from a psychological standpoint, adequately represent the interest of the child victim?

Dr. **Roberts**. I think in some instances they can be viable supports for their children and in other instances they may not be. I think that is where these interdisciplinary teams are going to do their best work, in identifying what the dynamics of the situation are and what is going to be optimal for the child and family. It may be optimal to remove the child and not allow any of the family to have any further contact. On the other hand it may be that the nonoffending parent may be a very strong, viable support.

Senator **Denton**. Thank you very much, Dr. Roberts. We admire you and the university for their work in this field. And I hope you will feel free and even ask to help us out as we try to deal with this issue.

Dr. **Roberts**. Thank you, sir.

[Prepared statement follows:]

PREPARED STATEMENT OF MICHAEL C. ROBERTS

Pediatric psychologists and mental health professionals generally are concerned with assisting children along their passage into adulthood by facilitating developmental, physical, mental and social growth. In their work, health professionals all too frequently encounter children who are faced with obstacles to normal development. Child abuse, and particularly sexual abuse, is being recognized now as trauma of significant proportions. Various health professionals work with children and families involved in the complexity of the child abusive situation. In alliance with colleagues in mental health, medicine, and law enforcement, we strongly support efforts to humanize a dehumanizing sequence that begins with the abusive act.

In this statement, we will address the following issues: First, we will discuss the potential for psychological trauma resulting from children's involvement in prosecution of child sexual abuse cases. Second, we will outline several innovations designed to reduce this trauma including many techniques specifically noted in the proposed Senate Bill 11[illegible] 56 introduced by Senator Jeremiah Denton entitled "The Child Victim Witness Protection Act of 1985." We encourage the development and implementation of these innovative procedures.

Sexual abuse is a social problem with physical, psychological, and legal ramifications. The sexual abusive situation is an exceedingly complex one that presents no simple solutions for prevention of abuse, for protection of victims, and for therapeutic intervention for victims, offenders, and their families. Furthermore, there is an increased complexity when prosecution is warranted. The trauma of sexual abuse is certainly bad enough for the child, but the needs of society for prosecution of offenders and protection of the child victim and other potential victims often add to the trauma. The needs of the sexually abused child include caring and understanding, therapy, support for the family, and opportunities for returning to a nondisruptive, normal developmental pathway. Occasionally, the child may also need to feel a sense of justice or vindication over the perpetrator, but this feeling is more of the society as a whole. The requirements of prosecution to achieve this societal sense of justice conflict at times with the needs of the child victim to deal psychologically with the abuse trauma and then to regain regular developmental activities. Yet, investigation and prosecution may put up impediments to the adjustment process.

Not all children will be traumatized by the experience of testifying in the process of investigation and prosecution. On the other hand, not all abused children are capable of feeling vindicated by the legal system. The potential is always present for further injury to these particularly vulnerable children. We know of far too many cases where child victims have been interviewed repeatedly by different adults, subjected to emotionally-arousing and confusing procedures by poorly trained and insensitive professionals, and have undergone lengthy delays and continuances in legal hearings. These child victims have been forced to repeatedly relive the abusive episodes and not allowed to put the trauma behind them in order to move along the developmental path. Some children have verbalized confusion over the judicial system that appears to punish the victim by the very process designed to protect and vindicate them. Children get removed from homes; they are deprived of emotional support at particularly stressful points; they may sense personal responsibility for the abuse and feel guilt for the family disruption; their cases may get continued for over a year; their testimony may be required for as many as twenty times often with detailed recall of the events each time; and they may have to confront the offender directly.

This need not be. In many locales, teams are developing to include law enforcement, child protection workers, prosecutors, mental health professionals, and physicians. These teams are coordinating their efforts and utilizing knowledge of child development and the dynamics of sexual abuse to meet the two goals: First, there is the child's need for sensitive support, therapy, and protection. Second, there is society's need to deal with the offender. These teams are also employing a number of innovative techniques to help reach these goals.

Psychologists, as health care professionals concerned with the welfare of children, endorse the development and evaluation of such techniques to reduce potential trauma to the sexual abuse victim. We are not alone in this endorsement; many concerned professionals of all disciplines have advanced innovative proposals we find conducive to children's welfare and development. These innovations, some suggested in the proposed bill (S.1156) under consideration, can lead to considerable improvement in the way in which children and their families are handled in this troublesome process. We want to discuss these innovations and to encourage further consideration of them through adoption of federal legislation.

First, the concept of interdisciplinary teams is an important one for responding to the child sexual abuse situation. These teams reflect a concern for society's requirements for justice, but their development also indicates a concern for children's special needs. Such teams balance investigatory needs with mental health needs. The worth of interdisciplinary teams is being demonstrated in several projects around the country. The provision in Senate Bill 1156 encouraging the development of these teams can positively impact on the way in which children are treated by sensitizing team members to the various requirements for each to fulfill professional roles such as evidentiary needs and therapeutic needs. These teams can foster greater understanding of the child victim and his or her family. Legal investigations need not be as psychologically traumatic as they have been; children can be approached in ways that are sensitive to their special status and to their mental health needs. At the same time, valid evidence can be obtained. These interdisciplinary teams can also provide support for team members while dealing with these emotionally laden cases.

Second, these teams, by including various professionals in law, child protection, mental health, and medicine, can improve the coordination of services provided by various agencies involved in this complex situation. In many locales, services are fragmented and, unfortunately, sometimes nonexistent. Agencies may work at cross-purposes as each individually pursues its particular goals in a case. Teams can foster coordination and strive toward the two goals noted earlier: assist the child and family and prepare for prosecution if necessary. Such teams should become involved as early as possible whenever abuse is first suspected to maximize benefits of coordination and to improve the situation for the child victim and family.

Third, we agree there is a strong need for improved training of all professionals specializing in sexual abuse cases including lawyers, judges, police, social workers, psychologists, psychiatrists, physicians, and others. This training must be specially available since typical professional training is inadequate for the unique dynamics of sexual abuse. That is, typical professional training, even of those disciplines with licenses or certification, does not provide the increased knowledge and skills demanded in these circumstances. This is as true of the mental and physical health professions as it is of law and law enforcement. For example, medical examinations of children suspected to have been abused especially need to be performed with sensitivity and expertise, but studies of medical training indicate that most physicians have not been adequately trained in the examination of child genitalia. Training in the mental health professions such as psychology, psychiatry, and social work provides the necessary basics of practice in each professional discipline, but very little work is provided in the complexity of sexual abuse. Finally, investigators and prosecutors receive the basics of legal training, but little exposure to the often unique aspects of this complicated legal-social-psychological-medical condition. In addition to the requirements of special training in each discipline represented on the interdisciplinary team, there are some common training components we suggest would be beneficial for all involved.

Improved interviewing techniques need to be taught to team members. These might include joint interviewing to minimize the number of repetitions by the child with different adults or by delegating fact-finding to one interviewer with input from other team members. Interviewing can be enhanced through the use of words and concepts appropriate to the developmental level of the child. Thus, training to provide knowledge of child development processes can help team members do their jobs. Both therapeutic and investigatory goals can be fostered through sensitivity to the child victim's developmental stage in the social, verbal, cognitive, emotional, and moral thinking domains. Further, recognition of the child's social and cultural background can aid in understanding socialization issues, for example, that may raise a child's reluctance to discuss the abuse or sexual topics. Professionals' knowledge of normal developmental play patterns may also preclude false accusations of sexual abuse. Applications of standard professional practices and assumptions may be appropriate in some aspects of sexual abuse work, but more often, specialized knowledge in the dynamics of sexual abuse will be required. Through the improved training components of this bill, the interdisciplinary teams can provide sensitive, emotionally-supportive, and developmentally-appropriate services.

Fourth, in order to minimize the number of interviews and investigatory personnel interrogating sexual abuse victims, we urge further consideration of videotaping of initial interviews and possibly for introduction of evidence in legal hearings in lieu of the child's presence. Concomitant to this is the proposed admissibility of hearsay evidence from professionals in these cases. These are not only psychological issues, but legal ones with constitutional ramifications. To the extent that these techniques or procedural revisions may be necessary for the protection of the child victim and ensure conscientious prosecution, then, from a psychological perspective, they are worth considering. The safeguards on the use of these special techniques must meet constitutional criteria, but these become legal, not psychological questions. Of paramount importance, in our view, is the child's welfare. We encourage that accommodations be found for those cases when these are necessary. In particular, workers in the field have been finding that at least half of the children now being referred for sexual abuse are under six years of age. Consequently, videotaping and changed hearsay evidence rules may be essential in this circumstance because these aged children traditionally have been excluded as incompetent witnesses. In particular, material gained in evaluative and therapeutic interviews with mental health professionals should not be considered hearsay, and therefore inadmissible, as such professional testimony is based on information directly provided by the victim in a trustworthy relationship.

Fifth, judges and prosecutors need to work to make legal procedures and the courtroom more conducive to the child's psychological welfare. For example, they need to minimize procedural delays in the court so that cases do not drag on indefinitely. Continuances should be evaluated on legal grounds, but most significantly on child developmental criteria in light of the child's needs. Courts also need to arrange for special scheduling of children's court appearances when testimony is required because children have special needs for rest and activity and for psychological preparation. Additionally, an emotionally supportive person should be permitted to be present with the child during all sessions to explain the process and to provide continuity and familiarity. Judges need guidance in such matters as how to rephrase questions, how to recognize indications of stress, fatigue, and confusion, and how to respond to a child's perception of intimidation. In general, judges need help in modifying the court procedures in order to protect the child from further harm while in the courtroom. Children require allowances within the court's jurisdiction with an aim toward making prosecution more of a developmentally-enhancing process than one that impedes the child's return to normal psychological growth. These special allowances would have the goal of improving the child's comfort and lessening potential fear and embarrassment, so that additional trauma is not foisted on the vulnerable child. In addition, the child will gain greater credibility as a witness.

The judicial system has not been necessarily concerned with the rights and special needs of children, but more to the finding of fact and the rights of the defendant, as constitutionally mandated. In the child abuse case, though, the therapeutic needs of children should become equally important in the investigatory and judicial process.

Sixth, judges and prosecutors should become sensitive to the needs of the child within the family. This is particularly true in the vast majority of cases where the offender is a relative. Therapy and support need to be provided the child and family; therapy should be available for the offender as well. The goal of all interventions and activities should be geared to what is in the optimal interests of the child in conjunction with the needs and interests of society at large. Careful consideration should be given to minimize the disruption of the family. Coordinated treatment and after-care for all involved is an important aspect of a comprehensive approach to the sexual abuse situation.

Finally, we urge formal recognition of what is an underlying assumption of Senate Bill 1165 and many efforts in the legal realm: children are competent to testify if approached through sensitive questioning using age-appropriate words and concepts. In this statement, we do not want to overly dwell on this issue since in previous testimony before this Subcommittee on Juvenile Justice last year, Gary Melton, a psychologist, attended directly to this point (May 22, 1984). Children can provide valid testimony; we need to find the best way for this to occur.

Many of the innovations do not require major changes in order to achieve positive impact on the psychosocial well-being of the children brought into the judicial system. We hope that the incentives in the bill will encourage states to do the things outlined and, indeed, to go beyond these innovations to find additional procedures to protect children.

We would like to see one component added to this bill encouraging the states to arrange for evaluation of the impact of the innovations made. The current evidence is minimally present about the total effects of preventing further trauma. However, enough intuitive and experiential support is available to warrant implementation of the bill's facets. Senate Bill 1156 does provide a rather unique opportunity to not only encourage innovation, but also to evaluate the changes.

We would also like to comment on the innovative funding mechanism for encouraging states to develop programs. The use of the Crime Victim's Fund seems particularly appropriate for aiding children of sexual abuse. This bill does not add any imposition on the states or the federal taxpayers while providing an opportunity to help children move past their traumatic circumstances.

While improved responses to sexual abuse after the fact are necessary, we also encourage additional work and funding devoted to the development, dissemination, and, most importantly, evaluation of programs for preventing sexual abuse. Prevention efforts will need to be continually available, applied at multilevels, and from a developmental perspective. Prevention can be the key to avoiding both the initial episodes of abuse and the subsequent trauma of testifying.

As professionals interested in the development and welfare of children, the Society of Pediatric Psychology and the American Psychological Association want to state appreciation for the invitation to comment on the general issues involved in sexual abuse and, in particular, on the Child Victim Witness Protection Act of 1985 introduced by Senator Denton.

V I T A

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Education

B.A.	University of Missouri-Columbia, May 1973 Major: Psychology, with Honors in Psychology and General Honors.
M.S.	Purdue University, August 1974 Major: Clinical Psychology. Masters thesis: *The Effects of Being Imitated on Adult Attraction to Children*.
Ph.D.	Purdue University, May 1978 Major: Clinical Psychology with Honors, Related Area: Social/Developmental Psychology. Doctoral Dissertation: *On Competence and Being Imitated: Effects of Levels of Imitation on Attraction, Reciprocal Imitation, and Causal Attribution*.

Internship, University of Oklahoma Health Sciences Center, 1977-1978.

Experience and Employment

1984	Visiting Scholar, Vanderbilt Institute for Public Policy Studies, Center for the Study of Families and Children.
1982 - Present	Associate Professor of Psychology, University of Alabama.
1978 - 1982	Assistant Professor of Psychology, University of Alabama
1980 - Present	Psychologist License #301, Alabama Board of Examiners in Psychology.
1978 - Present	Coordinator, Clinical Child Psychology Training Concentration, University of Alabama.

1977 - 1978	Intern, Pediatric Psychology Division, Children's Memorial Hospital, Oklahoma City, OK, (with rotation to Outpatient Psychiatry, University Hospital) Department of Psychiatry and Behavioral Sciences, University of Oklahoma Health Sciences Center.

Honors and Awards

Fellow, American Psychological Association, Divisions of Clinical Psychology and Child, Youth, and Family Services, 1985
President, Society of Pediatric Psychology 1985
Board of Directors, Association for the Care of Children's Health, 1985-1987
Board of Directors, Alabama Affiliate, Association for the Care of Children's Health
1980 Psi Chi University of Alabama, "Professor of the Year"
Sigma Xi Research Society
David Ross Summer Research Grant, 1977, Purdue University
NIMH Predoctoral Fellowship, 1973, 1975, Purdue University
Finalist, Sigma Xi Student Research Competition, Purdue University, 1974
Phi Beta Kappa
Psi Chi, Psychology Honor Society
University Scholar, University of Missouri-Columbia, 1969-1973

Consultantships

Genesis House, Group Home for Adjudicated Youth, Teaching Family Model, Tuscaloosa, 1979-84

Family Practice Center, University of Alabama College of Health Sciences, Departments of Psychiatry and Pediatrics, 1978-present.

St. Elizabeth Hospital and Home Hospital, Lafayette, Indiana, Pediatric Units, 1976-1977.

Extended Works

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Roberts, M. C. (in press). Considerations on the "Guidelines for Training Psychologists to work with children, youth, and families." *Proceedings of the National Conference on the Training of Clinical Child Psychologists*.

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Roberts, M. C. (in press). The *Places Rated Almanac* and training in clinical child psychology. *Journal of Clinical Child Psychology*.

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Convention Presentations

Roberts, M. C., Santogrossi, D. A., & Thelen, M. H. (1975). Adult models' reactions to their imitators and nonimitators. Paper presented at the Convention of the Midwestern Psychological Association, Chicago, IL.

Roberts, M. C., Santogrossi, D. A., & Thelen, M. H. (1975). The effects of model affect on imitation. Paper presented at the Spring meeting of the Indiana Psychological Association, Kokomo, IN.

Roberts, M. C., Santogrossi, D. A., & Thelen, M. H. (1975). The effects of being imitated on adult attraction to children. Paper presented at the Annual Convention of the American Psychological Association, Chicago, IL.

Roberts, M. C., Meier, R., Santogrossi, D. A., & Moore, D. R. (1976). Prediction of student success in PSI. Paper presented at Spring meeting of the Indiana Psychological Association, Indianapolis, IN.

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Roberts, M. C. (1977). The effect on adults of being imitated by children: A review and methodological critique. Paper presented at the Symposium: The effects of children on their caregivers: The bent twigs reciprocate. At the Convention of the Midwestern Psychological Association, Chicago, IL. (Also abstracted by ERIC/CAPS)

Santogrossi, D. A., Roberts, M. C., & Hay, F. (1977). Use of contingent and noncontingent cued self-monitoring to promote academic on-task behavior. Paper presented at the Annual Convention of the Association for Advancement of Behavior Therapy, Atlanta, GA.

Roberts, M. C. (March, 1979). On being imitated: Effects of levels of imitation and imitator competence. Paper presented at the Convention of the Southeastern Psychological Association, New Orleans, LA.

Roberts, M. C. (March, 1979). A conceptualization of failure to thrive. Paper presented in M. C. Roberts (chair), Psychological Approaches to Pediatric Problems. Symposium presented at the Convention of the Southeastern Psychological Association, New Orleans, LA.

Roberts, M. C. (May, 1979). Psychological preparation for pediatric hospitalization and surgery. Paper presented in M. C. Roberts (chair), Pediatric Psychology: Theory and Intervention for Psychological-Medical Problems with Children. Symposium presented at the Convention of the Midwestern Psychological Association, Chicago, IL.

Roberts, M. C. (September, 1979). Clinical child programs: Where and what are they? Paper presented in A. Barclay (chair), Clinical child psychology: Mapping a future. Symposium presented at the Convention of the American Psychological Association, New York.

Roberts, M. C., Boone, R. R., & Wurtele, S. K. (March, 1980). Response uncertainty and imitation: Effects of preexperience and vicarious consequences. Paper presented at the convention of the Southeastern Psychological Association, Washington, DC.

Roberts, M. C. (1980). The psychologist and pediatrician: Consultation, liaison, and case management. Paper presented in M. C. Roberts (chair), Psychological intervention in the pediatric setting. Symposium presented at the convention of the Southeastern Psychological Association, Washington, DC.

Beidleman, W. C., Roberts, M. C., & Wurtele, S. K. (1980). Children's perceptions of medical and psychological disorders in their peers. Paper presented at the convention of the Southeastern Psychological Association, Washington, DC.

Roberts, M. C., Wurtele, S. K., & Boone, R. R. (1980). Reciprocal imitation as an effect of being imitated: Is it *really* reciprocal? Paper presented at convention of Midwestern Psychological Association, St. Louis, MO.

Roberts, M. C. (September, 1980). Clinical child specialty training: The dangers of too narrow a view. Paper presented in J. Tuma (chair), *Specialty versus generic clinical training: A case for the specialty of clinical child psychology*. Symposium presented at the Convention of the American Psychological Association, Montreal.

Roberts, M. C. (May, 1981). A prevention emphasis on decreasing medical fears in nonpatient children. Paper presented at the convention of the Association for the Care of Children's Health, Toronto.

Thurstin, A. H., Labs, S. M., Myers, H. H., & Roberts, M. C. (1981). The development and evaluation of a social skills training package for juvenile delinquents. Paper presented at the convention of the Southeastern Psychological Association, Atlanta, GA.

Roberts, M. C., Wurtele, S. K., Boone, R. R., Ginther, L. J., & Elkins, P. D. (1981). Reduction of medical fears in a general population of children: A prevention approach. Paper presented at the convention of the Southeastern Psychological Association, Atlanta, GA.

Roberts, M. C., & Elkins, P. D. (August, 1981). Prevention of health and accident problems in childhood. Paper presented in L. Wright (chair), *Applying general principles of behavior to health and accident problems in children*. Symposium presented at the convention of the American Psychological Association, Los Angeles, CA.

Roberts, M. C., & Maddux, J. (August, 1981). Historical conceptualizations of infant failure to thrive. Paper presented in J. K. Whitt (chair), *Infant failure to thrive: New empirical and clinical directions*. Symposium presented at the convention of the American Psychological Association, Los Angeles, CA.

Roberts, M. C., & Elkins, P. D. (August, 1981). Audio-visual procedures to reduce medical fears in nonpatient children. Paper presented in M. C. Roberts (chair), *Hospitalization and medical fears in children: Application and research approaches*. Symposium presented at the convention of the American Psychological Association, Los Angeles, CA.

Beidleman, W. C., Roberts, M. C., & Johnson, A. Q. (March, 1982). Assessment of children's perceptions of medical and psychological disorders. Paper presented at the convention of the Society of Behavioral Medicine, Chicago, IL.

Roberts, M. C. (March 18, 1982). Applications of psychological research to traffic engineering. Paper presented at Spring meeting of Alabama Division of the Institute of Transportation Engineers, Birmingham, AL.

Roberts, M. C. with Dingus, C. M., Turner, J. T., & Kupfer, D. L. (March, 1982). Psychological intervention in the medical center setting. Full day workshop presented at the convention of Southeastern Psychological Association, New Orleans, LA.

Roberts, M. C. (March, 1982). Training of clinical child psychologists. Paper presented in M. T. Erickson (chair), *Is clinical psychology meeting the mental health needs of children?* Symposium presented at the convention of the Southeastern Psychological Association, New Orleans, LA.

Roberts, M. C., Elkins, P. D., & Royal, G. P. (August, 1982). Applying psychology to the prevention of childhood accidents and illness. Paper presented in M. C. Roberts & L. Peterson (chairs), *Prevention of problems in childhood: Psychological research and applications*. Symposium presented at the convention of the American Psychological Association, Washington, DC.

Roberts, M. C. (October, 1982). Examining the stress of children and their families before entering the hospital. (Plenary Session) Alabama Hospital Association, Auxiliaries Statewide Conference, Montgomery, AL.

Potter, P. C., & Roberts, M. C. (March, 1983). Children's perception of chronic illness: The roles of disease symptoms, cognitive development, and information. Paper presented at the convention of the Southeastern Psychological Association, Atlanta, GA.

Maddux, J. E., & Roberts, M. C. (August, 1983). Developmental considerations in the prevention of problems in childhood. Paper presented in M. C. Roberts & L. Peterson (chairs), *Prevention of problems in childhood: Psychological research and applications*. Symposium presented at the convention of the American Psychological Association, Anaheim, CA.

Roberts, M. C. (August, 1983). Discussant. In M. C. Roberts & L. Peterson (chairs), *Prevention of problems in childhood: Psychological research and applications*. Symposium presented at the convention of the American Psychological Association, Anaheim, CA.

Roberts, M. C. (chair) (August, 1983). *Pediatric, health, and substance abuse articles: Assessment and treatment issues*. Poster session at the convention of the American Psychological Association, Anaheim, CA.

Elkins, P. D. & Roberts, M. C. (April, 1984). Reducing children's medical fears: Primary prevention through a "Let's Pretend Hospital." Paper presented at the convention of the Southeastern Psychological Association, New Orleans, LA.

Roberts, M. C. (chair) (August, 1984). *New directions of pediatric psychology: Research and applications in prevention*. Symposium presented at the convention of the American Psychological Association, Toronto.

Roberts, M. C., & Turner, D. S. (August, 1984). Rewarding parents for their children's use of safety seats. Paper presented at the convention of American Psychological Association, Toronto.

Turner, D. S., Roberts, M. C., & Whalen, W. J. (January, 1985). A case study: Child restraint usage at two day care centers. Paper presented at 64th Annual Meeting of Transportation Research Board, Washington, D.C.

Royal, G. P., & Roberts, M. C. (April, 1985). Students' perceptions of and attitudes toward handicapped children: A comparison of twenty handicapping conditions. Paper presented at convention of the Southeastern Psychological Association, Atlanta.

Roberts, M. C. (May, 1985). Advocacy for the care of children's health. Presented in Affiliate Officers' Workshop. Conference of the Association for the Care of Children's Health, Boston.

Roberts, M. C. (May, 1985). How to publish in the child health care field. In session with consultants. Conference of the Association for the Care of Children's Health, Boston.

Roberts, M. C. (May, 1985). Minimal guidelines for training psychological service providers to children, youth, and families. Paper presented at the National Conference on the Training of Clinical Child Psychologists, Hilton Head Island, SC.

Roberts, M. C. (August, 1985). The future of children's health care: What do we do? Society of Pediatric Psychology Presidential Address presented at convention of The American Psychological Association, Los Angeles.

Roberts, M. C. (chair). (August, 1985). Public policy issues in pediatric psychology. Symposium presented at the convention of the American Psychological Association, Los Angeles.

Roberts, M. C., & Fanurik, D. (August, 1985). Rewarding elementary school children for their use of safety belts. Paper presented at the Convention of the American Psychological Association, Los Angeles.

Book Reviews Published

Roberts, M. C. (1978). Review of Thomas, A., & Chess, S. Temperament and Development. New York: Brunner/Mazel, 1977. In Journal of Clinical Child Psychology, 7, 160.

Roberts, M. C. (1979). Review of Balis, G. V., Wurmser, L., McDaniel, E., & Grenell, R. G. (Eds.), Psychiatric Problems in Medical Practice. Boston: Butterworth Publishers, 1978. In Journal of Clinical Child Psychology,8, 141.

Roberts, M. C. (1980). Review of Wright, L., Schaefer, A., & Solomons, G., Encyclopedia of Pediatric Psychology. Baltimore: University Park Press, 1979. In Journal of Clinical Child Psychology, 9(1), 87.

Roberts, M. C., & Wurtele, S. K. (1980). Book review of Lahey, B., & Kazdin, A., (Eds.), Advances in Clinical Child Psychology. New York: Plenum Press, Vols. 1, 2, 3, & 4, 1978-1980. In Journal of Clinical Child Psychology, 9(3), 248-250.

Roberts, M. C. (1983). Review of Moss, H. A., Hess, R., & Swift, C. Early intervention programs for infants. New York: Haworth Press, 1982. In Journal of Pediatric Psychology, 8, 388-390.

Roberts, M. C. (1985). Review of Stinson, R., & Stinson, P., The long dying of Baby Andrew. Boston: Little, Brown, 1983. In Journal of Pediatric Psychology, 10, 110-112.

Roberts, M. C. (in press). Review of Stevenson, H. W., & Siegel, A. E. (Eds.). Child development research and social policy. Chicago: University of Chicago Press, 1984. In Journal of Pediatric Psychology.

Research Grants

Child Mental Health Institutional Training Grant. National Institute of Mental Health. Approved and funded for 1984-85. Amount: $39,062. Renewed for 1985-86. Amount: $39,062. (with Carl Clements)

Evaluation of Buckle Up Bama's Future Program. Biomedical Research Support Grant. 1984-85. Total amount: $900.

Demonstration of research procedures for encouraging child restraint usage. Biomedical Research Support Grant. 1983-84. Amount: $750. (with Daniel S. Turner)

Headstart Regional Office. Contract for psychological assessment services in UA Psychological Clinic. 1983-84. Amount: $7,560. (with Jean Spruill)

Enhancing compliance and predicting noncompliance in a medical situation. Research Grants Committee, University of Alabama. Funded: April, 1980. Amount: $2,000.

The influence of preexperience on imitation. Venture Fund Grant, University of Alabama. Funded: December, 1978. Amount: $2,480.

Applications of psychological modeling in decreasing medical fears in children. Research Grants Committee, University of Alabama. Funded: November, 1978. Amount: $2,168.

Application of a standardized compliance program to control juvenile diabetes. Small Grant Award, University of Oklahoma Health Sciences Center, Research Council of Health Sciences Center. Funded: February, 1978. Amount: $3,000.

The use of modeling in the reduction of children's fears of physicians. David Ross Grant, Purdue University, Purdue Research Foundation. Funded: February, 1976. Amount: $3,600. Renewed: February, 1977. Amount: $3,600.

David Ross Summer Research Grant, Purdue University, Purdue Research Foundation. Funded: Summer, 1977.

Editorial Reviewer and Consulting Editor

Journal of Pediatric Psychology, Associate Editor
Journal of Clinical Child Psychology, Board of Editors
National Institute of Child Health and Human Development, Study Section on Injury Control
National Science Foundation, Grant Reviewer
March of Dimes Foundation, Grant Reviewer
Journal of Personality and Social Psychology (Reviewer)
Journal of Experimental Child Psychology (Reviewer)
Replications in Social Psychology (Reviewer)
Law and Psychology Review (Reviewer)
Book and Prospectus Reviewer for Holt, Rinehart, & Winston; Academic Press; Macmillan; Sage; Saunders; Guildford Press; Prentice-Hall
Criminal Justice and Behavior (Reviewer)
Journal of Consulting and Clinical Psychology (Reviewer)

University, Departmental, and Community Activities

University Committee on Graduate & Faculty Scholarship, 1979-1981.

Biomedical Research Advisory Committee, Graduate School, 1980-1984.

Departmental Executive Committee, 1979-1982

Department Committee on Instruction, 1981-1982

University Student Awards Committee, 1981-1984.

Ridgecrest Children's Center, Program Review Committee, 1980-1984.

West Alabama Health Council, Project Review Committee, 1980-1982; Membership Committee, 1981; Development Committee, 1982; Board of Directors, 1982-1983.

Tuscaloosa County Mental Health Association, 1981, Professional Advisory Board.

Professional Activities

Section on Clinical Child Psychology, Division 12, Clinical Psychology of American Psychological Association. Member, Education and Training Committee, 1980-81.

Society of Pediatric Psychology, Section V of Division 12, American Psychological Association, Editor of Newsletter, 1980-1983. Council member, 1980-1983. President-elect, 1984. President, 1985.

Southeastern Psychological Association, 1981-1983. Program Committee.

Division 38, Health Psychology, of American Psychological Association. Regional Council.

Division 37, Child, Youth & Family Services of American Psychological Association, Task Force Training, 1982-1983. Program Committee, 1983.

Division 12, Clinical Psychology of American Psychological Association, Program Committee, 1984.

Memberships in Professional Societies

Sigma Xi Research Society
American Psychological Association
Division 8, Society for Personality and Social Psychology
Division 9, Society for the Psychological Study of Social Issues
Division 12, Clinical Psychology
Section I, Division 12, Clinical Child Psychology
Section II, Division 12, Continuing Professional Development
Section III, Division 12, Experiemental Analysis of Behavior
Section V, Division 12, Society of Pediatric Psychology
Division 27, Community Psychology
Division 37, Child, Youth and Family Services
Division 38, Health Psychology
Southeastern Psychological Association
Midwestern Psychological Association
Alabama Psychological Association
Society of Behavioral Medicine
Association for the Care of Children's Health
Tuscaloosa County Mental Health Association
National Child Passenger Safety Association

Newsletter Articles and Published Letters

Roberts, M. C. (1981). Letter to the editor. The Health Psychologist, 3(1), 3.

Roberts, M. C. (1981). Letter to the editor. American Scientist, 69(6), 600-601.

Roberts, M. C. (1985). Enhancing the excitement of pediatric psychology. Newsletter of the Society of Pediatric Psychology, 9(1), 1-2.

Roberts, M. C., & Elkins, P. D. (1981). Health psychology publications: The right message to the wrong audience? Newsletter of the Society of Pediatric Psychology, 5(3), 1-2.

Roberts, M. C. (1985). Pediatric psychology, children's injuries, and prevention. Newsletter of the Society of Pediatric Psychology, 9(2), 2-4.

Senator **Denton**. Our next witness is Hon. Gary L. Aldridge, State senator from Hartselle, and I will ask him to come forward. Senator Aldridge is a 1977 graduate of the University of Alabama School of Law and practices law in Decatur. Welcome Senator Aldridge.

He has served in the senate of Alabama since 1982, where he is chairman of both the senate health committee and the legislative task force on child abuse and neglect. The good senator spearheaded legislation setting up the children's trust fund in 1983, and this year he was sponsor of a comprehensive package of bills dealing with child abuse.

Senator Aldridge is also very much involved with the Parents And Children Together Program [PACT], a child abuse prevention and treatment program.

So we have these things, these approaches originating in Huntsville, Montgomery, and Decatur, various parts of Alabama being addressed within the government of the State as well as by private individuals.

And for you, Senator Aldridge, please accept my commendation for your excellent work in and out of the senate. I welcome you to today's hearing. Your complete statement, written, will be included in the record, and we ask you to summarize your oral comments in 10 minutes, please.

STATEMENT OF HON. GARY L. ALDRIDGE, STATE SENATOR FROM HARTSELLE, AL

Mr. **Aldridge**. Thank you, Senator Denton. On behalf of my colleagues in the Alabama Legislature, I would like to thank you for holding these field hearings in Alabama, and I also would particularly like to thank you for sponsorship in the initiation of the Child Victim Witness Protection Act of 1985.

Senator Denton, when I was a young sophomore in college I had a part time job in the district attorney's office. It was there that I first met Bud Cramer, who was a young assistant district attorney. We had a case in Huntsville that year that left a strong impression on me, and I daresay that it had a lot to do with Bud Cramer and I both being here today.

It was a case of a little 3-year-old girl who was consistently through her lifetime mistreated by her parents, by both parents. She was battered, she was broken, she was burned. And the last months of her life she was kept in a wooden box in the backyard, not even permitted to share the family household. Eventually the mother scalded the child to death. The child was so battered it had drawn up into a fetal position, its last defense in going out of the world like it came in. When they got her to the hospital the doctors pulled six maggots out of one of her ears. It was just a horrible case.

In those days in the early seventies we thought that child abuse and neglect and the sexual exploitation of children was occasional and rare. Unfortunately we find today that it's a very frequent problem. We expect that in Alabama this year we'll have 35 reported cases of child abuse and neglect. That number pales in comparison to the number of actual cases, the caseworkers tell us. The caseworkers tell us that sexual exploitation of children has reached epidemic proportions in Alabama. Consequently the public demands that the policymakers on a State level and on a Federal level do something about this national nightmare, child abuse, and neglect.

Last year in the Alabama Legislature we spearheaded a movement to have a comprehensive package of legislation dealing with this subject. We provided for criminal background checks for people working with children, we set up a missing children's bureau. But a significant portion of the legislative package that we were involved with dealt with the child witness victim.

I would like to go over some of the things that we have been able to accomplish in recent months in Alabama. Because, Senator Denton, I feel like this is one area with your leadership and with the leadership that we have had from a number of public officials, some whom you have seen here today, Alabama is a leader in this area.

We now have provisions allowing for the videotaping of a child's deposition on motion of the district attorney. We allow for the use of closed-circuit television in appropriate cases. I might add that we, in drafting this legislation, were very sensitive to the constitutional rights of the defendants.

We relaized then that if we wrote laws that were not constitutional, all we were going to be doing is subjecting children to going back to the courts a second time once the courts, appellate courts reversed the cases. We mandate that the child victim of sexual abuse or sexual exploitations a competent witness. We permit the use of anatomically correct dolls or mannequins to assist the child witness victim who is under the age of 10 years old.

We have eliminated unnecessary delays in court proceedings to minimize the length of time that the child must endure the stress involved in court proceedings. We allow for the leading questions to aid the testimony of the child witness or victim.

And I might add in talking about leading questions, you know, the problem with leading questions in the judicial system is that the person doing the examination is suggesting answers to the witness. That is the problem with leading questions. I submit in this area, that if that is being done to the point that it's impermissible, the defense counsel is going to know and in cross examination is going to cover those problems. But it's a very beneficial tool for the prosecutor.

We have initiated on a statewide basis the use of interdisciplinary teams, or we call them multidisciplinary teams or child protection teams to aid in the investigation and treatment of child abuse. We have mandated that each county in the State will have such child protection teams.

We are fortunate with programs like Mr. Cramer initiated in Madison County. It's a model program for the entire Nation, not just for Alabama. But we had a problem in as much as we didn't have that in most of the other counties, and now we have provided for an avenue for that. We have had legislation, the legislation forbidding the releasing of the identities of child victims. It has been mentioned earlier that the child defendant was always protected and preserved in this regard, but now we also protect the identity of the child victim. And we discourage repetitive interviews and examination of the child victim.

The multidisciplinary teams, we feel like, is a very effective approach in cutting down on the number of abuse cases by the use of videotape of repetitive interviews. In the use of the videotapes and other techniques, one thing that we were careful not to do is to draw an arbitrary line and say to the district attorney this child can only be interviewed five times. Because it may very well reach the point where the child is not properly ready for court after only five interviews. So we are asking that the judicial system be sensitive to that without imposing arbitary deadlines.

We have made a lot of progress in Alabama. We have a lot to do. Much remains to be done. Right now we have a little crisis in the funding of social service agencies. We have two few social workers to deal with this great proliferation of cases that they are confronted with.

Senator Denton, we hope that we can forge a partnership between the Federal and State governments to help the most vulnerable of our victims in society. This is an important area. There are other areas that need attention as well. Preventive programs needs to be stressed and emphasized. We realize that a child that is hungry or that a child that is in need of basic medical care is every bit as neglected as a child who has been neglected by the family.

So you have our commitment in the State of Alabama, in the State Legislature of Alabama to do something about this problem. We, again, appreciate your efforts and what you have done on a national level. I'm glad to say that from the accomplishments that we have made and from the testimony that you have heard today, when you go back to Washington and go into other States to conduct hearings, you can hold up Alabama as a model for efforts that are being done to help our children.

Senator Denton. Well, we do, Senator Aldridge. And you happen to be a Democrat, and I happen to be a Republican. But, as I mentioned, this problem transcends party lines, and I appreciate your assurance and your interest in teamwork. I work for every person in the State of Alabama, whether they are Republicans or Democrats, whether they voted for me or not—and fortunately many Democrats did or I wouldn't be up here with the opportunity to help.

But it's also a multiracial situation. Up in Huntsville I was inspired by a lady who must be of considerable age. Let's see. In 1914 she was 11. And she made up her mind then that she was going to take care of black children who were more or less abandoned, neglected, and in many cases abused. And she has given her life to that.

Her board of directors is about 50-50 black and white. The people who serve there are about 50-50 black and white. The same thing is true in the other locations where I have seen this going on. So it permits us to work together instead of extending the time in which, this State because of inheriting the terrible institution of slavery, we are now working together and we are going to be—this is a related point.

In working together on these important social matters, we are also working together on economic matters. And for the first time the State is leading in all sorts of economic indicators as well as social indicators. At the same time Alabama's Supreme Court effort, with the son of a governor not now in office, but I work closely with the one in office here now, had a case going in the Supreme Court from Mobile, AL on school prayer.

This Senator was passing something that reversed the decisions of all Federal courts which had implied that if a couple of little boys were saying grace in a schoolyard asking a blessing over their meals, they are violating the Constitution establishing religious freedom. Well, we passed a bill permitting equal access for religious clubs in public schools, which I think goes on in Alabama anyway. But in other States it doesn't.

So we are working together. I'm very proud of our State in all of these areas. And I think we are discovering how good our economic condition is, how good our social standards can be, how good our pursuit of happiness can be if we do work together. Its a great privilege to have worked with you on your bill. It has been contemporary with our effort to build one federally, and we have learned a lot from what you are doing.

We do have an intention of an addition of something in your bill, and I want to ask your opinion of it, and also whether on not with the wording of your bill, whether this State would already be able to use this additional guideline which is in my bill.

In our bill, we will include a provision for the team of child advocates and family counselors. With all of the excellent provisions in your bill, you do not have that specific requirement. Does the language in your bill permitting the State Department to include representatives of other professions, would that allow child advocates and family counselors to be added to your interdisciplinary teams with no change to your bill?

Mr. ALDRIDGE. Senator Denton, when we were drafting our legislation, we considered that and gave much deliberation to that. We provided in the legislation that the Victim's Assistance Program that we had enacted previously, that we would try to tailor make it to what we were doing here. And so we were hopeful that we would be able to use that victim's assistance person to aid the child in the courtroom, to provide that support to the child in the courtroom that he needed. It may be, in fact, that we need to broaden our base to provide some stronger language, adopt your language for more support for the child in the courtroom.

We have got in this session of the legislature—Alabama legislature—that will be staring in January, we are going to have some other bills that will complement the effort that we have started. We realize that we haven't done everything that needs to be done. And so it may be that we need to look at that and adopt your language to help make our legislation better legislation.

Senator DENTON. Your legislation does protect the identify of victims in the same manner that juvenile offenders are protected and the child victim has sealed identity, the court records are sealed. Have those protections raised any first amendment concerns from any source, including writers or the media?

Mr. ALDRIDGE. We had initially in the legislation a provision that said that the press could not print or broadcast the identity of a child. I am a country lawyer and not a constitutional lawyer, Senator Denton, and I was told that that constituted a prior restraint on the press. So we went at it a little bit different way in order to make it constitutional.

And we required that the court officials could not release the information. If the press is able to get that information through some means, then we can't prohibit them under the first amendment from printing or broadcasting it. But we can restrict court officials, clerks, registrars, things of that nature from releasing the information. We think we have solved the constitutional problem that might arise there.

Senator DENTON. We have succeeded in passing legislation at the Federal level exempting certain information concerned, for example, on the Rico statute. And we still have an active consideration being given to exempting information on names and testimony regarding terrorism cases, drug cases. I wonder if we would ever have to go that far and perhaps make an example here to, say, the Freedom of Information Act?

Mr. ALDRIDGE. Senator Denton, I don't know. We have found extreme willingness of the press in Alabama to participate and be partners and to go along. They have been very helpful, as a matter of fact, in helping us to secure passage of legislation.

Senator DENTON. I can't think that that wouldn't be generally true throughout the country.

Finally, we are trying to make some States eligible if possible by the manner in which we drafted the eligibility requirements. I would like to know whether you think that this brief statement of eligibility requirement in our bill would permit Alabama to be immediately eligible?

You know what it says. For the information of those here, it says the State is eligible for assistance under this section if the attorney general determines that the State has enacted statutes with respect to the investigation and adjudication of child abuse cases which: A, minimize the additional trauma to the child victim and; B, improve the chances of successful criminal prosecution or legal action.

Do you think they would make it?

Mr. ALDRIDGE. Yes, sir, I would think so, Senator Denton, and I really like the breadth of the bill in that regard, of your legislation. In looking at your bill and the details of it I felt like that probably we in Alabama would be in pretty good shape to qualify, to be eligible under the legislation. That is not to say that we don't have a lot to do yet in Alabama. But we have accomplished an awful lot of what you are seeking to accomplish on a national basis.

Senator **Denton**. Are you going to be looking in the next session or subsequently into the issue of modification of the unlawful interference with the child custody statute?

Mr. **Aldridge**. Yes, sir. Senator Denton, let me say that in talking with members of your staff, we were made aware of a loophole in the law. And it's an unfortunate loophole. Since then I have talked to some of my constituent group, and we have been confronted with the problem that this is a glaring example of.

Your office has helped them tremendously in identifying a missing child. So we hope to be able to solve that problem with interference of custody by making it retroactive. It should have been all along. And I think it was just by legislative oversight that it isn't.

[Prepared statement follows:]

PREPARED STATEMENT OF GARY L. ALDRIDGE

In Alabama this year we expect 35,000 cases of child abuse and neglect will be reported. Social workers tell us this number pales in comparison to the number of actual cases. Children in Alabama are beaten and burned. They suffer broken bones. And, many live with physical and emotional scars. Also, some die horrible and brutal deaths. Sexual exploitation of children has reached epidemic proportions. We have too many cases and too few social workers to help the most helpless of our victims.

Alabama is not immune from the national nightmare of child abuse. But it is now a public issue, no longer the unmentionable topic it was just a few years ago. The people in this state expect that their policy makers respond. And we have responded. But, much remains to be done.

The Child Victim Witness Protection Act of 1985, compliments our efforts in Alabama. In the last session of the legislature, we passed a comprehensive package of bills to fight child abuse and to protect our children. A significant aspect of this legislative program attempts to prevent the child victim/witness from being victimized a second time by the adult judicial system. In this regard, our legislative effort accomplished the following:

1. Makes provisions for the video taping of a child witness or victim's testimony on motion of the District Attorney.

2. Allows for the use of closed-circuit television in appropriate cases.

3. Mandates that the child victim of sexual abuse or sexual exploitation is a competent witness.

4. Permits the use of anatomically correct dolls or mannequins to assist the child witness or victim who is under the age of 10.

5. Eliminates unnecessary delays in court proceedings to minimize the length of time the child must endure the stress of involvement in the proceeding.

6. Allows for leading questions to aid the testimony of the child witness or victim.

7. Initiates on a statewide basis the use of interdisciplinary teams to aid in the investigation or treatment of child abuse.

Although we have made tremendous progress with our legislative agenda, much remains to be done. In particular, we are greatly handicapped by our lack of financial resources to properly help abused children. The Child Victim Witness Protection Act of 1985, through the availability of Child Victim Witness Protection Grants, will be invaluable to our efforts. I can assure this subcommittee that the policymakers in Alabama are deeply appreciative for this partnership with our national lawmakers to help abused children.

Protection of the Child Victim/Witness is an important feature in the national movement to protect our children. But in addition, we need a broad, all-out assault on the national tragedy of child abuse and neglect. We need more emphasis on preventive programs. We drastically need more funding for the front-line social workers. And we should not forget that there are children who are hungry or in need of basic medical care. It is as shameful as any other kind of neglect.

Alabama is a leader in commitment to our children. But it is commitment that cannot end with the passage of legislation. We must continue in a cooperative spirit with all levels of government and with a fierce determination. We have too much at stake not to give this movement our best.

Thank you for coming to Alabama for these important hearings.

Senator **Denton**. Well, thank you, sir. You have said in the Alabama Lawyer, January 1985 edition, Alabama has distinguished itself as a leader in the search for solutions to society's problems in America. I think that is true; as a State we have, and you are certainly one of those leaders who have comprised that leadership. And I want to acknowledge that and thank you very much, senator Aldridge, and thank you for your testimony today.

I will call our final witness, Mrs. Anita Armstrong Morgan. She is the executive director of the Alabama Crime Victim's Compensation Commission. Welcome, Mrs. Morgan. The commission provides compensation and assistance to victims of crime including victims of sexual assaults, spousal abuse, and child abuse.

Mrs. Morgan, your full written statement will be placed in the record. And I will ask you, as I asked the others, to summarize your oral testimony in 10 minutes, if you will. Thank you for coming this morning.

STATEMENT OF ANITA ARMSTRONG MORGAN, EXECUTIVE DIRECTOR OF THE ALABAMA CRIME VICTIMS COMPENSATION COMMISSION

Mrs. **Morgan**. Thank you on behalf of the commission for inviting me to testify. I think I speak for everybody here that our children are certainly our most important asset and we want to preserve that asset. We certainly want to make their lives better, especially those children who have been the unfortunate victims of all types of crime.

After reading the Child Victim Witness Protection Act of 1985 introduced by you, I was real proud that our Alabama Senator had seen the need for such changes to be made in our judicial system relating to the treatment of children who are the victims or the witnesses of crime. As everyone has said, the need to minimize the additional trauma to the child is great, that we have got to do something, and it's certainly time we address those issues.

During my 5 years with the Montgomery County District Attorney's Office before coming with the crime victims compensation commission, I worked with all types of crime victims there. And I learned firsthand that the victimization of the court system so often is so much more traumatic than the actual crime itself. It's no wonder that people who are victimized second and third times don't even report the crime to the authorities.

I recall sitting with a child victim who was 9 years old who had been sodomized by a young man in her neighborhood. I was sitting through the trial with the little girl and her mother. As it turned out, the man was acquitted. I felt like and knew in my heart that this child had actually been a victim. But as I will point out, one of the things that I am so concerned about is that children so often are not believed.

When we left that courtroom that day, I will never forget the look on that woman's face. She was so devastated, as was the child. But the mother said to me, "If anything ever happens again to me, there will be no point in going to the police. You know, I will never report anything again." She was so hopeless at that point that it brought home all the atrocities of the criminal justice system on all of our victims and witnesses. It was a sad day for me, and certainly there have been a lot of days like that for all of us who work in the criminal justice system.

One of the areas that I particularly like about S. 1156 is the section referring to procedures that would minimize the trauma and the reference to providing training to those who deal with the child victim. I would also like to see included in that section education of the public, because as everyone else has mentioned, one of my personal goals is educating the public, those people who will eventually sit on juries who make decisions about whether or not to acquit someone, and trying to teach the public that these atrocities really do happen, that fathers really can molest their daughters, and that these things are not fabrications of children's minds, that they really do happen.

Recently on the Today Show, there was a defense attorney who was being questioned, I think, about the *McMartin* cases in California. He said, on the Today Show, that 60 percent of children are lying about their testimony when they say they have been molested, which is false information. You and I know that, but the public who was watching the Today Show did not know that, and he stated that as a fact. Those are the kind of things that worry me as one who works in the criminal justice system.

I feel that S. 1156 would be able to provide funds to help address some of these problems. We have taken some important steps in Alabama within the last 2 to 3 years regarding all victims. As the others have testified regarding some of the recent legislation, some of this legislation has become model legislation for other States.

In addition to the current legislation that has been passed, this coming fiscal year's budget will include additional funds for district attorney's offices to provide a victim service officer in each circuit to help all victims in their progression through the court system. They will, thus, be able to provide support to child victims as referred to in your bill, With some training, these victims service officers can make a world of difference to the child who enters the criminal justice system as a victim.

In my work in the district attorney's office, sometimes just the smallest, seemingly most insignificant thing you could do could help the child mentally, like bringing the child into the courtroom and sitting them down in the witness seat and letting them see what a microphone is, letting them sit at the counsel table, just looking around the courtroom. To see the courtroom and see what is going to happen to them can make all the difference in the world sometimes.

Another major step we have taken in Alabama is the passage of the Alabama Crime Victims Compensation Commission Law in 1984 which sets up a fund similar to the fund setting up the Victims of Crime Act of 1984. Alabama's fund, made up of fines and court costs paid by the criminals in Alabama, will provide approximately $1.6 million per year to be used to financially compensate innocent victims of violent crimes. This money may be used to help pay medical bills, lost wages, funeral expenses, and so forth of those victims who qualify.

To qualify a victim must not have contributed to his or her offense. In other words, they must be an innocent victim of a violent crime. They must cooperate fully with law enforcement. They must report the crime within 72 hours after its occurrence. They must not have been in the process of committing a crime when becoming a victim. And the compensation must not benefit the offender.

This law was meant to help those truly innocent victims, and children and spouses of innocent homocide victims whose financial burdens are usually overwhelming after becoming victims of violent crimes. Anyone, regardless of income level, will be able to apply for compensation from this fund. The maximum award is $10,000. The law, our law, is quite broad compared to many other States. It includes residents and nonresidents when the crime occurred in Alabama, and some States do not include nonresidents. We include motor vehicular crimes, and we can include compensation to family members as long as the offender does not benefit.

Our procedure includes making application to the commission, our office investigating the crime to make sure that the person actually was a victim and the crime actually occurred, and then presenting that case to our three-member commission for their review. We also have an appeal process available to victims who are dissatisfied with our decision.

The compensation law will and has already, since January, been able to help many victims, including some child abuse and child molestation victims with medical bills and costs of counseling as long as the offender is not still in the home benefiting from the award. The commission also has made a provision to waive the requirement of reporting the crime within 72 hours for those victims of child abuse and/or molestation where often the crime occurs months prior to the child ever telling about the incident. In cases like that we felt like it was important to waive the reporting requirement, although the law was written to specifically state that the crime has to have been reported within 72 hours.

One of our first children that we compensated with these funds was a 6-year-old little girl who was kidnaped in Mississippi. She was in the process of going next door in her apartment building to get an egg to give to her babysitter to make some cookies with. During her jaunt from her parent's to the next door neighbor's apartment she was kidnaped by a man, brought to Alabama and raped and then left in Alabama and was found on a cold, wet night without any clothes on. This child's family eventually moved to Florida and made application to the Crime Victims Compensation Commission and has been compensated for her psychiatric expenses.

The Alabama Crime Victims Compensation Commission is composed of three commission members appointed by the Governor. Our law was the 40th compensation in the United States. One of the things that makes our law unique and is being used as model legislation for some of the other States who have not already passed compensation laws is that Alabama's law requires that a victim or the family member of a victim sits on this three-member commission that is appointed by the Governor. We also require that a law enforcement officer who has had at least 10 years experience with victims sit on this three-member commission, and also one at-large member appointed by the Governor.

One of the other things that makes our law somewhat unique is the provision which mandates the commission to act as an advocate on behalf of all victims throughout the State. We are in the process of attempting to identify rules and regulations and procedures that might be detrimental to victims in any way. If at all possible, we want to try to change those rules or procedures.

One of the things that we feel like is a recent success is that we have been trying to put pressure and trying to pass a law in this past session to implement a victim impact statement, which would be available to all the judges in the States before they sentence someone. We are asking that judges have some information available to them on how the crime impacted upon the victim, that is whether they are going to be traumatized the rest of their life, whether they were threatened by the defendant, or whatever it might be.

Recently, although the law did not pass, the board of pardons and paroles came to us and told us that they were implementing this procedure. In spite of the fact that the law did not pass, they are implementing this procedure on their own to have all of their probation officers include victim impact statements to be available for judges. We feel that now the judge will have more information on which to base his sentence.

As an advocate on behalf of crime victims throughout Alabama, I would like to state in conclusion that I'm pleased with the intent of S. 1156, and I encourage its passage and future implementation. Although we have made some great strides in Alabama, we certainly still have a long way to go in helping our victims, and especially our children. We would like to thank uou, Senator Denton, for your work in this area.

Senator **Denton**. Thank you, Mrs. Morgan, for your work and for your testimony. Your testimony indicates a good bit of emphasis on helping the victims of capital crime, homicide, and says that the law will be able to help many victims of child abuse and child molestation with medical bills and costs, et cetera.

Last October the President signed legislation making funds available to supplement State victim compensation programs and support victim assistance agencies and organizations across the country. And in that legislation he specified that in order to receive victim assistance rewards, a State must certify that priority will be given to providing assistance to victims of sexual assault, spousal abuse, or child abuse.

Does the State of Alabama in view of the ACVCC and the compensation law meet this requirement in your opinion at this time?

Mrs. **Morgan**. Well, as I understand that new law, there will be—the moneys will be separated, and part of the funds will go to compensation programs throughout the State, and the other part of that money will go to victim assistance programs. So the compensation program, as I understand it, will benefit from these victim assistance programs.

I think in Alabama we have got some excellent programs that will meet the criteria, and that is one of the things that I am concerned about, that we promote those. And I think your bill will aid in what we are already doing in Alabama and what this money is already going to be able to do.

Senator **Denton**. Federal moneys are currently going to the States to fund child abuse prevention and treatment compensation programs. However, there are no moneys or emphasis relating to improving the criminal justice system as it relates to child abuse victims.

By your indication of approval, I guess you see this bill as a means to provide the necessary emphasis to improve the justice system so it does not revictimize the child victim. You have put it in the scale in a manner no one else has by saying that in some cases, because of that revictimization, the child and the family probably would not be a complainer in a subsequent case. That is pretty rough. Do you think this helps enough?

Mrs. **Morgan**. I think this will make a tremendous amount of difference. And it will, I think, give more stability and credence to our entire judicial system because in that example that I used with the woman who said she should never take a case to court again, you know, our whole judicial system is based on our witnesses. And if we don't have witnesses and people who are willing to come before the court to testify, then we don't have cases and then we don't get cases solved.

So I think our whole judicial system is based on people like that. And if we continue to discourage those people through our poor judicial system, then we are losing ground every day. And I think your bill will boost our system a great deal.

[Prepared statement follows:]

PREPARED STATEMENT OF ANITA ARMSTRONG MORGAN

After reading the Child Victim Witness Protection Act of 1985 introduced by Senator Denton, I was very proud that our Alabama Senator had seen the need for such changes to be made in our judicial system relating to the treatment of children who are the victims or the witnesses of crimes. The need to minimize the additional trauma to the child is great.

During my five years with the Montgomery District Attorney's Office and my work there with all types of crime victims, I learned firsthand that the victimization of the court system so often is more traumatic than the actual offense that occurred. It is no wonder that we have people victimized second and third times who never report the crime to law enforcement. Of course, our children bear the worst burden of all. Not only do we expect them to understand the procedures of trial, we also expect them to use adult terms, hold up emotionally, to be believable witnesses, and to function emotionally afterwards as if nothing had ever happened.

One of the areas I particularly like about S.1156 is the section referring to procedures that would minimize the trauma and the reference to providing training to those who deal with the child victim. I would also like to see included in that section education of the public, one of my personal goals is to educate the public - those who sit on juries - as well as those working within the criminal justice system.

One of the biggest obstacles to convicting the child molesters and abusers is that jurors do not believe children. If jurors had a better concept of the trauma children experience during the commission of the crime and then during the trial, they might better understand why a child behaves the way they do on a witness stand. Or if jurors could conceive of the capacity of a father molesting his daughter, they might believe the daughter and convict the father. Too often, I have sat through trials with children who I know had been victims and too often, have I seen jurors acquit the defendant because the child's story on the witness stand was just too hard to believe. Our public needs to know that most sexual abuse of children occurs with a relative or a friend of the family's.

I feel that S. 1156 will be able to provide funds to help address some of these problems. We have taken some important steps in Alabama within the last 2-3 years regarding all victims. I am sure the others will testify regarding some recent legislation, some of which has become model legislation for other states. In addition to the current legislation, this coming fiscal year's budget will include additional funds for District Attorney's offices to provide a Victim Service Officer in each circuit to help all victims in their progression through the court system. They will, thus, be able to provide support to child victims as referred to in S. 1156. With training, these Victim Service Officers can make a world of difference to the child who enters the criminal justice system as a victim.

Another major step we have taken in Alabama is the passage of the Alabama Crime Victims Compensation Commission (ACVCC) law in 1984, which sets up a fund similar to the fund setting up the Victims of Crime Act of 1984. Alabama's fund, made up of fines and court costs paid by criminals in Alabama, will provide approximately $1,600,000 per year to be used to financially compensate innocent victims of violent crimes. This money may be used to help pay medical bills, psychiatric bills, lost wages, funeral expenses, etc. of those victims who qualify.

To qualify, a victim must not have contributed to his/her offense, must cooperate fully with law enforcement, must report the crime within 72 hours after its occurrence, must not have been in the process of committing a crime when becoming a victim and the compensation must not benefit the offender.

This law was meant to help those truly innocent victims, and children and spouses of innocent homocide victims whose financial burdens are usually overwhelming after becoming victims of violent crimes. Anyone, regardless of income level, will be able to apply for compensation from this fund. The maximum award is $10,000. The law is quite broad compared to many other states. It includes residents and non-residents when the crime occurred in Alabama, motor vehicular crimes, and can include compensation to family members as long as the offender does not benefit.

The Compensation law will be able to help many victims of child abuse and child molestation with medical bills and costs of counseling as long as the offender is not still in the home benefitting from the award. The Commission also has made a provision to waive the requirement of reporting the crime within 72 hours for those victims of child abuse and/or molestation where so often the crime occurs months prior to the child ever telling about the incident.

The ACVCC is composed of three Commission members appointed by the Governor. Alabama's law requires that a victim or the family member of a homocide victim be appointed, a law enforcement officer who has had at least ten years experience with victims of violent crimes and one at-large member. This requirement of appointing a victim is one of the unique aspects of Alabama's law that has caused it to become a model for other states who have not yet passed compensation laws. Another aspect of our law that is somewhat unique is the provision which mandates the Commission to act as an advocate on behalf of all victims throughout the state. We are in the process of attempting to identify rules, procedures or laws that are harmful to victims and change those rules, procedures or laws. A recent success is the implementation by the Board of Pardons and Paroles to include in all pre-sentence reports to judges a victims impact statement outlining the complete impact of the crime on the victim. Hopefully, judges will now have more information on which to base his sentence such as whether or not the victim has been threatened by the defendant, the psychological effect of the crime, etc.

As an advocate on behalf of crime victims throughout Alabama, I would like to state, in conclusion that I am pleased with the intent of S.1156 and encourage its passage and future implementation. Although we have made some great strides in Alabama, We certainly have a long way to go in helping our victims, especially our children. Thank you.

RESUME

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EDUCATION

Robert E. Lee High School	September 1968 to June 1971 Diploma - College Preparatory
University of Alabama Unviersity, Alabama	August 1971 to May 1975 BS Degree in Correctional Psychology
Troy State University Montgomery, Alabama Maxwell Extension	September 1975 to March 1977 MS Degree in Guidance and Counseling

EMPLOYMENT

August, 1984 - Present: Executive Director, Alabama Crime Victims Compensation Commission

	Duties include administration of Program to compensate victims of violent crimes.
1980 - July, 1984:	Director, Pre-Trial Diversion Program, Montgomery County District Attorney's Office. Duties included supervisor of staff, screening and testing of applicants, interview families of applicants, making referrals and follow-ups to other agencies, presenting cases to Citizen's Advisory Commission on Prosecution, writing contract requirements and presenting applicant to District Attorney, presenting cases to the Circuit Court Judges, counseling with clients weekly, reviewing cases for termination and supervision of ROR (release on own recognizance) Program.
1982 - July, 1984:	Director, Victim/Witness Assistance Unit, Montgomery, County District Attorney's Office. Duties included supervision of staff, support to victims and families of victims throughout their involvement with the criminal justice system, information about the court system and specific cases, making referrals to other community agencies, counseling with victims, sitting through trials with victims, aiding with restitution to victims, research of restitution paid in Montgomery County since 1975, and efforts to follow legislation affecting crime victims.
June, 1979 - August, 1980:	Assistant Director, Pre-Trial Diversion Program, Montgomery County District Attorney's Office. Duties include making recommendations to the District Attorney regarding applicants for this program, indepth interviewing of each applicant, weekly counseling with clients, developing working relationships with other agencies, supervising the investigator, and community education through public speaking.
November 1978 - June 1979:	Director, Elmore County Satellite Office of the Montgomery Area Mental Health Authority. Duties included supervision of staff and administration of all mental health center services to Elmore County, individual therapy with both children and adults, jail evaluations, training to other agencies, and community education through public speaking.
August 1977 - November 1978:	Duties included supervision of staff and administration of psychiatric residential facility, coordinating psychological and medical services, supervising six staff members, allocating budget, conducting individual and group therapy, and keeping records current. Volunteers were coordinated and utilized by the program.
July 1976 - August 1977:	Non-Institutional Care Services Community Coordinator, Transitional Home, Montgomery Area Mental Health Authority. Duties included coordinating community resources and services with state mental health institution, arranging delivery of services to clients where needed, assisting in placing clients in community facilities and nursing homes after

discharge from Transitional Home, writing regular follow-up reports on progress of clients placed in the community, counseling with clients and families of clients returning to their families.

July 1975 -
June 1976:

Field Representative, Developmental Disability Survey, Montgomery Area Mental Authority.

Duties included designing and implementing research into the area of developmental disabilities over a four county area, contacting agencies for referrals and services offered, counseling with developmentally disabled persons, individually to determine needs, researching funding sources, publishing community resource booklet, and designing programs to fill the needs determined by the survey.

PROFESSIONAL TRAINING

1. National Council on Crime and Delinquency, New Orleans, June, 1973.
2. Transactional Analysis Workshop, Tuscaloosa, April, 1975
3. Alabama Symposia on Behavioral Science
    a. First Annual and Second Annual conferences on Blacks and the Criminal Justice System, Tuscaloosa, January, 1974, February, 1975
    b. Alabama Symposium on the Female Offender, Tuscaloosa, January, 1975
    c. Alabama Symposium on Rape, Tuscaloosa, January 1975.
4. Rational Behavioral Therapy Workshop, Tuscaloosa, Maxie Maultsby, 1975
5. Special Education Workshop, Montgomery, August, 1975.
6. Dyslexia Workshop, Montgomery, 1976.
7. Conference on Rape, Montgomery, October 1976.
8. Workshop on Family and Systems Theory and Family Psychotherapy, Murrey Bowen, MD, Tuscaloosa, March, 1977.
9. Conference on Battered Women, Montgomery, September, 1978
10. Conference on Death and Dying, Elizabeth Kubler-Ross, Auburn, January, 1979.
11. Alabama Judicial College, Seminar on the Alabama Criminal Code, Tuscaloosa, November, 1979
12. Crisis Intervention: Family Abuse, Speaker, Tuskegee, April, 1980.
13. Domestic Violence Program Workshop, Speaker, Montgomery, July, 1980.
14. Child Abuse Conference, Montgomery, January, 1981.
15. Reality Therapy Workshop, Dr. Spann, Montgomery, February, 1981.
16. Behavioral Interviewing Training(BETA), Gene DeValera, AUM, March, 1981
17. Treating the Abuser, Dr. Karl Kirkland, John Zimmerman, Montgomery, May, 1981
18. Services for Victims of Crime, Orlando, July, 1981.
19. Victimization Conference, University of Alab ama, September, 1981.
20. Effective Techniques with Battered Women and Batterers, Montgomery, October, 1981. (I organized this seminar for professional counselors.)
21. Incest Conference, University of Alabama, Birmingham, February, 4-5, 1982.
22. Victimization Conference - Victims Rights Week, Montgomery Civic Center, Montgomery, March, 1982; sponsored by Montgomery District Attorney's Office.
23. Spiritual and Personal Growth, Baptist Hospital, Montgomery, Dr. Scott Peck, July 8, 1982.
24. North American Victim Service Conference, Las Vegas, Nevada; sponsored by NOVA, September 7 - 10, 1982.
25. Sentence Computation Seminar, Governors House Motel, Montgomery; sponsored by Montgomery County District Attorney's Office September 30, 1982.
26. Victims of Crime and Leniency, Montgomery Civic Center, Montgomery; sponsored by Montggmery County District Attorney's Office, November 15, 1982.
27. Depression and Suicide, Atlanta, Georgia; Kurt Alfred Alder; sponsored by the University of Georgia.
28. Second Annual Forum on Victim Rights, Washington, D.C.; sponsored by NOVA, April 15, 1983

29. Second Annual Assembly of Victims, Montgomery Civic Center, sponsored by Montgomery County District Attorney's Office and VOCAL, April 18, 1983
30. Rape Conference, Montgomery;sponsored by Council Against Rape, April 22, 1983.
31. Victim Advocacy-the Demand for Justice; sponsored by NOVA in Jacksonville, Florida, September 6-7, 1983.
32. Alabama Face Drunk Drivers, MADD, Montgomery Civic Center, Candy Lightner, September 30, 1983.
33. Third Annual Assembly of Victims, sponsored by the Montgomery Montgomery District Attorney's Office and VOCAL, Montgomery, April 16, 1984.
34. Rape, Incest, and Sexual Assualt; Dr. Charles Gentry and Ann Burgess, Montgomery, May, 1984.
35. Victim Advocacy; sponsored by the District Attorney's Office, Greenville, South Carolina, June 15, 1984.
36. Technical Assistance Seminar on Funding for Victims Services, spondored by NOVA, Washington, D.C. August, 9-12, 1984.
37. Tenth Annual NOVA Conference, Des Moines, Iowa, October 7-10, 1984.

PROFESSIONAL ORGANIZATIONS

1. Licensed Professional Counselor - 2/82 to present, License #358
2. Advisory Board Member, Victims of Crime and Leniency (VOCAL), 1982 to present.
3. Alabama Personal and Guidance Association, 1982 to present.
4. Volunteer Counselor Montgomery Area Family Violence Program.
5. Member, National Organization of Victim Assistance (NOVA), 1981 to present.
6. Co-founder and first President, Domestic Abuse Shelter, Inc. Board, 1978-1982.
7. Past Chairman, District Attorney's Advisory Commission on Family Violence.
8. Member, National Association of Pretrial Services Agencies, 1983 to present
9. Founder and President, Alabama Network of Victim Services, 1983 to present.

PERSONAL

Born; September 14, 1953
Marital Status: Married, one (1) child
Spouse: Randall Morgan, Attorney, Hill, Hill, Carter, Franco, Cole and Black
Health: Excellent

REFERENCES

Mr. Jimmy Evans, Montgomery District Attorney, 15th Judicial Circuit, Montgomery, Alabama

Representative Glen Browder, Jacksonville, State University, Jacksonville, Alabama

Mrs. Miriam Shehane, President, Victims of Crime and Leniency, (VOCAL) Clio, Alabama

Senator **Denton**. Thank you very much, Mrs. Morgan.

I want to thank all the witnesses, many of whom are still here, you also the people who came today. A lot of great sacrifice went into the preparation for this hearing, perhaps most exemplified by Dr. Mike Roberts who prepared much of his statement today with great self-restraint during the Alabama and Georgia game. I expressed my hope that he did that mostly during the half, and he said he had.

But I want to thank you all and make it clear to those who are here, have heard a voluminous set of testimonies. And we have heard them summarized. We do have the complete written statements of the respective witnesses over there along with some other information including pictures of the children, the two missing children. We want to thank you all for your interest this morning. I want to remind all of the witnesses that they might receive written questions from me or other members of the subcommittee, and be prepared to submit those responses within 15 days from the time you receive the questions, please.

This hearing stands adjourned.

[Whereupon, the subcommittee was adjourned, subject to the call of the Chair.]

CHILD VICTIM WITNESS PROTECTION ACT OF 1985

TUESDAY, NOVEMBER 19, 1985

U.S. SENATE,
SUBCOMMITTEE ON JUVENILE JUSTICE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The subcommittee met, pursuant to notice, at 10:20 a.m., in room SR-385, Russell Senate Office Building, Hon. Arlen Specter (chairman of the subcommittee) presiding.

Also present: Senators Denton and McConnell.

Staff present: Richard D. Holcomb, general counsel (Senator Denton); Frances R. Wermuth, chief clerk (Senator Denton); and Chris Reynolds (Senator McConnell).

Senator DENTON. We have a prelude to the hearing, and if I may, since there is an opportunity for the press to do something further useful in this matter—they have already helped a great deal—I would like to take advantage of this opportunity by displaying pictures of three young missing Alabamians. I would, before doing that, note with extreme pleasure that through the mutual efforts of the FBI, the Chicago police, the Madison County District Attorney's Office, Senator Simon, myself, and with the assistance of the press, we were able to locate young Richard Lawrence DeVaney II, whose picture is on the left up there, and reunited him with his father in Madison, AL.

And we have some other missing children here with rather clear pictures, and drawings, and I would like to introduce those to those who would promulgate their image, photographically.

The first child is Christopher Alan Fullmer of Birmingham who was kidnaped by his noncustodial mother and was last seen in the East Lake Roebuck area of Birmingham.

The one on the far right, Christopher Alan Fullmer, and the picture which is drawn, the artist's depiction, represents the artist's best rendition of what Christopher might look like today. The second child, Heather Nicole Sullivan of Decatur, AL, was kidnaped by a noncustodial father, and was last seen in Decatur, AL, on December 25, 1984, and she is the one second from the right, and it has been less than a year since she was last seen. So that photograph should be a reasonably good depiction of the way she looks now.

The third child is Alan Lucy who may be a victim of a stranger abduction. He is the second one from the left, last seen May 21, 1985, in Uniontown, AL. So that is not too long ago, and he should still look like that.

We have, as I say, had remarkable success, having publicized pictures only once before at a hearing in Birmingham. So I would ask the press, if they would, to publicize these pictures, and ask the public to contact the National Center for Missing and Exploited Children, if they have any information about these children, or any others they know to be missing in like manner.

The telephone numbers for that are 1-800, and then "The Lost", T-h-e L-o-s-t, in letters, or the Alabama Missing Children Bureau at 1-800-288-7688.

Thank you very much.

OPENING STATEMENT OF HON. ARLEN SPECTER, A U.S. SENATOR FROM THE STATE OF PENNSYLVANIA, CHAIRMAN, SUBCOMMITTEE ON JUVENILE JUSTICE

Senator **SPECTER**. Ladies and gentlemen, I regret the delay in convening this hearing. One of the problems with the hearings which are scheduled involves the multiplicity of other hearings. I have just come from a hearing on grand jury testimony, which is being convened in Senate Dirksen 226 and at 10:30, I am scheduled to preside at a hearing to be held by the Administrative Practice and Procedure Subcommittee concerning the Internal Revenue Service. Senator Denton has been waiting for my arrival. I apologize to him. I had not expected to have the hearing delayed, awaiting my arrival, but these things happen, and he has other commitments.

But on to the substance of the hearing, which I think is a very important subject. It concerns the legislation introduced by my distinguished colleage from Alabama, Senator Denton, on S. 1156, the Child Victim Witness Protection Act, and there is hardly a subject of greater importance than the victimization of children in our society, and the issue of protecting witnesses and providing for testimony to be adduced at court to bring culprits to justice, is a very, very important subject.

There is a long history of the difficulty of presenting testimony from children of tender years, because of the difficulty of their understanding the nature of the oath, and the difficulty of their being subjected to cross-examination. The kinds of problems which all witnesses have are magnified, tremendously, with children, especially in a context where they have to be confronted with their accusers, as is a defendant's constitutional right, and so often in child victimization cases, the accuser may be a member of the family, may be a stepfather, may be someone that they have to come into contact with, and there are many issues being explored as to how some corrective measures might be taken.

Perhaps closed circuit television where the accused can confront the witness without having the witness necessarily in the presence of the accused. These are very complex issues, and the initiatives which Senator Denton has undertaken here in this bill are very important, and Senator Denton has done outstanding work in the Senate, generally, and on the Judiciary Committee as a whole, but certainly in the field on juvenile justice, and it is a real pleasure for me to work with Senator Denton. I am delighted to yield to him at this time for his opening statement.

OPENING STATEMENT OF HON. JEREMIAH DENTON, A U.S. SENATOR FROM THE STATE OF ALABAMA

Senator Denton. Well, Mr. Chairman, I know you have been heavily committed, I am, too, and I want to express my admiration for your leadership on the Judiciary Committee, and this subcommittee, and thank you for your kind comments, and for allowing me the privilege of chairing today's hearing.

You are a leader in the field of juvenile justice, and as a member of the subcommittee, I look forward to continuing to work with you in our mutual commitment to protect this Nation's children in the respect we are addressing it today.

Senator McConnell was here for the last hearing on a related subject and will return later, and Senator, if you wish to go, I will be happy——

Senator Specter. All right. If you would excuse me, Senator Denton, I do have other commitments. I am going to leave some questions for the record, and I do confirm that Senator McConnell is going to be here, shortly. He is in SD-226 as the sole Senator there. Senator McConnell is on his way. We are playing musical chairs. Thank you very much, Senator Denton.

Senator Denton [presiding]. Thank you. Senator McConnell, although absent, will soon be here, and I will have to turn this hearing over to him. As many of you know Senator McConnell was instrumental, in Kentucky, in pioneering, in these days, plowing the ground in this particular field in an exemplary manner. Kentucky became a model State in such child abuse legislation because of Senator McConnell's efforts, and I look forward to his arrival.

I will have to depart because the Armed Services Committee is addressing the reorganization of the Department of Defense, the possible entire abolishment of the Joint Chiefs of Staff, and so on, and I was there at 9, I left to come over here, expecting to return at 10:30, and if I have to turn it over to someone else, it is only to expedite the hearing to get the legislation passed quickly because it is important to the country and it is important to me.

In the interest of saving time, I will submit my complete prepared statement for the record, and simply state now that this is the second day of hearings dealing with S. 1156, the Child Victin Witness Protection Act of 1985.

The subcommittee previously met on September 3, 1985 in Birmingham, AL, and received testimony from a group of distinguished Alabamians, including a local district attorney, a State judge, a psychology professor, a State senator, and the director of the Alabama Crime Victims Compensation Commission. The witnesses today are from higher in our Government and are associated with organizations interested in this subject matter. The witnesses include the Honorable Lois Haight Herrington, Assistant Attorney General for the Office of Justice Assistance of the U.S. Deparement of Justice, and I will ask her to come forward.

Then Dr. Ellen F. Greenberg, administrative officer for the child, youth, and family policy, American Psychological Association; Mr.

David S. Liederman, executive director of Child Welfare League of America, Inc., and then a panel consisting of Mr. Curtis L. Decker, government liaison, National Association of Protection and Advocacy Systems, Inc., and Miss Suellen R. Galbraith, program director of the Alabama Developmental Disabilities Advocacy Program.

[Senator Denton's statement follows:]

PREPARED STATEMENT OF SENATOR JEREMIAH DENTON

Mr. Chairman; I thank you for your kind comments and for allowing me the privilege of chairing today's hearing. I commend you for leadership in the field of juvenile justice. As a member of this Subcommittee, I look forward to continuing to work with you in our mutual commitment to protect this nation's children.

As Chairman Specter stated the Subcommittee is meeting today to receive additional testimony on S. 1156, the Child Victim Witness Protection Act of 1985. The Subcommittee previously met on September 3, 1985, in Birmingham, Alabama and received testimony from a group of distinguished Alabamians, including a local District Attorney, a State Judge, a psychology professor, a State Senator and the District of the Alabama Crime Victims Compensation Commission.

The witnesses today include the Honorable Lois Haight Herrington, Assistant Attorney General for the Office of Justice Assistance of the U.S. Department of Justice; Dr. Ellen F. Greenberg, Administrative Officer for the Child, Youth and Family Policy, American Psychological Association; Mr. David S. Liederman, Executive Director, Child Welfare League of America, Inc., and a panel consisting of Mr. Curtis L. Decker, Government Liaison, National Association of Protection and Advocacy Systems, Inc. and Ms. Suellen R. Galbraith, Program Director, the Alabama Developmental Disabilities Advocacy Program.

The following organizations were invited to testify but because of a scheduling conflict will submit written testimony: the National Legal Resource Center for Child Advocacy and Protection; the American Bar Association; the National PTA; and A.C.L.U.

Before I call on our first witness, I would like to take a few moments to summarize the overall policy behind S. 1156.

Sexual victimization of children, including incest, rape, and other forms of sexual molestation, constitutes a social problem of major proportions in this country. Estimates regarding the incidence of such sexual victimization vary greatly depending upon the study, setting, the definitional criteria, and the methodology used for collecting the information. Most studies, however, would suggest that perhaps 200,000 to 400,000 children are sexually victimized every year. Some studies would suggest that the incidence is much higher. The National Center for Missing and Exploited Children projects that, on a national basis, one out of every seven minors will be sexually abused.

These abused children have suffered extreme trauma. Far too often, however, the abused child suffers additional trauma at the hand of an insensitive justice system which allows an over zealous defense attorney to intimidate, confuse, and badger the child witness into making courtroom statements which might be inconsistent with previous statements. Instead of providing the child victim with the necessary respect, understanding and compassion, the justice system, with its insensitive and intimidating investigative and adjudicative procedures, reduce the child victim to an automaton, caught in the drawn-out adult drama leading up to and including the court room.

To encourage respect, understanding and compassion for the child victim, I introduced the "Child Victim Witness Protection Act of 1985." The bill would encourage the states to implement protective reforms for the investigation and adjudication of child abuse cases. Such reforms would minimize the additional trauma to the child victim and improve the chances of successful criminal prosecution or legal action.

The bill is drawn from recommendations from the September 1984 Final Report of the Attorney General's Task Force on Family Violence, and from the October 1982 report from the National Legal Resource Center for Child Advocacy and Protection of the American Bar Association entitled "Recommendations for Improving Legal Intervention in Intrafamily Child Sexual Abuse Cases."

Under the proposed legislation, the level of the Crime Victim's Fund would be increased by $10 million to allow the Attorney General to provide modest Federal financial assistance to the states to implement programs and procedures established by previously enacted state statutes which minimize additional trauma to the child victim and improve the chances of successful criminal prosecution or legal action.

I believe that the "Child Victim Witness Protection Act" would allow the special needs of physically and sexually abused children to be addressed effectively.

Senator **Denton**. I concur with the remarks made by Senator Specter, and, rather than elaborate on them myself, I do want to add that the following organizations were invited to testify, but because of a scheduling conflict will submit written testimony.

These are the National Legal Resource Center for Child Advocacy and Protection; the American Bar Association; the National PTA; and the American Civil Liberties Union.

Again, the first witness is the Honorable Lois Haight Herrington, Assistant Attorney General, Office of the Justice Assistance, U.S. Department of Justice. I welcome you again to a busy morning.

[The letters follow:]

ALABAMA CONGRESS OF PARENTS AND TEACHERS, INC
PHONE 834-2501 / 207 NORTH JACKSON STREET / MONTGOMERY, ALABAMA 36104

August 26, 1985

Senator Jeremiah A. Denton, Jr.
516 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Denton:

We are indeed grateful for your continued efforts in support of the unfortunate victims of child abuse. The Alabama Congress of Parents and Teachers would like to commend you for your introduction of S. 1156, the "Child Victim Witness Protection Act of 1985" to the 99th Congress.

The need is paramount to eliminate additional trauma through repeated and often insensitive interviews or testimony of these children who have already suffered emotional and mental harm.

The following areas addressed in S. 1156 are of particular interest to our organization and we strongly support their inclusion in this much needed legislation.

1. A specific definition of a child sexual abuser
   We feel that one of the most serious problems with successful criminal prosecution or legal action in child abuse cases is the lack of a specific definition.

2. Utilization of anatomically correct dolls, drawings, videotaping statements and testimony or use of closed circuit television
   These are humane ways for providing testimony/statements by children who are, after all, the victims and should not be further harassed or intimidated.

3. Providing for a support person to the child victim prior to and during the the course of any legal or administrative proceeding to protect the interests of that child; or granting courts the authority to enter protective orders to protect the child victim from additional abuse
   These methods would certainly help to minimize the additional trauma suffered by the victim.

Alabama PTA has played an active role in working for effective child abuse legislation in our state. We still do not have some much needed legislation. The areas covered in this act would increase greatly our chances for passing the additional legislation since many of the concerns dealt with lack of funds.

Please feel free to call on us in support of this legislation.

Sincerely,

Arthur Mae Norris

Arthur Mae Norris, President

The National PTA
700 North Rush Street
Chicago Illinois 60611-2571
(312) 787-0977

Office of Governmental Relations
1201 16th Street N W
Washington D C 20036
(202) 822-7878

November 18, 1985

Honorable Jeremiah Denton
United States Senate
516 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Denton:

The National Congress of Parents and Teachers (National PTA) appreciates this opportunity to comment on the Child Victim Witness Protection Act, S. 1156, for the Hearing Record of November 19, 1985 of the Senate Subcommittee on Juvenile Justice.

On behalf of our 5.6 million members across the country, I wish to thank you for your efforts and those of the Subcommittee to protect children who are victims of physical and sexual abuse, and to express our support for S. 1156. This legislation would assist states in implementing much needed reforms related to the manner in which child victims are handled during the investigation and adjudication of abuse cases. The reforms would also aid in the prosecution of offenders or other legal resolution.

As we are all aware, child abuse is not a new tragedy. But this crime against children has too often been inadequately addressed in our society, perhaps because it is so abhorrent. The increase in reports of physical abuse, and especially sexual abuse, of children in recent years have led to greater citizen awareness of the problem and efforts to prevent its occurrence, treat its victims, rehabilitate when possible offenders, and assist troubled families.

The National PTA, and its state and local branches, have over the years developed programs to increase awareness among our members and communities about the problem of child abuse, and educate parents in child development and positive parenting skills. We also have advocated legislation to prevent and treat abuse at the state and federal levels.

At the federal level, the National PTA supports the Child Abuse Prevention and Treatment Act and increased funding for the National Center on Child Abuse and Neglect. In addition, we have called on the Congress to appropriate monies for Child Abuse Prevention Challenge Grants to encourage states to develop special funding mechanisms for prevention activities.

As our nation has become more aware of the serious problem of child abuse, we have also become cognizant that many of the institutions responsible for protecting child victims during the investigation and prosecution of abuse cases are ill equipped to do so. National PTA is concerned that victims of physical and sexual abuse are further emotionally victimized during these procedures.

Currently child victims are all too often thrust into a system that is not sensitive to their needs. They are subjected to grueling repetitive interviews by the various governmental agencies responsible for investigating abuse cases as well as lengthy court proceedings. They are expected to respond in a similar fashion as adults, yet their testimony is often discounted just because they are children. In many instances child victims are further traumatized by such procedures as face-to-face encounters with accused abusers.

Obviously the rights of the accused must be protected. However, in the cases of physical and sexual abuse, our judicial system is stacked against the victim. As a society, we have come to recognize that victims of crime deserve our full concern. Children, it appears, are the last to benefit from this concern.

Our members believe that a number of reforms, many of which are outlined in S. 1156, must be instituted by the states to protect children who are victims of abuse and promote their recovery from such trauma:

*Developing interdisciplinary teams of professionals and representatives of governmental agencies responsible for interviewing child abuse victims and prescribing treatment and other services.

*Providing a supportive person to protect the interests of the child victim during the entire process of investigation and legal or administrative resolution of the case.

*Training individuals involved in child abuse cases in the dynamics of abuse and in child development.

*Minimizing the number of interviews of the child and allowing the videotaping of interviews.

*Providing age appropriate protective environments for interviewing and court proceedings.

*Minimizing procedural delays and establishing court schedules consistent with the needs of children.

*Allowing, when necessary, to protect the child from further trauma, the videotaping of a child's testimony with appropriate professionals or the use of closed circuit television testimony in lieu of the child's personal appearance in court.

*Accepting the competency of the child witness and modifying heresay evidentiary rules in cases where the victim is very young.

*Extending the statute of limitations on criminal cases of child abuse.

Because S. 1156 focuses on the treatment of victims of child abuse by the judicial system, we believe its administration is appropriately placed within the Department of Justice. We also support provisions authorizing funds for the Child Victim Witness Protection Program from the Department of Justice Crime Victims Fund. During a period of severe budget constraints this funding mechanism can ensure implementation of this much needed program, while it avoids any competition for limited federal funding with the important Child Abuse Prevention and Treatment programs at the Department of Health and Human Services or the Juvenile Justice and Delinquency Prevention Program at the Department of Justice.

The National PTA believes that S. 1156 will help states provide protections for children who are victims of abuse and we urge its enactment by the Senate. Thank you for considering the views of the National PTA.

Sincerely,

Millie Waterman

Millie Waterman,
Vice President for
Legislative Activity

Senator DENTON. Ms. Herrington.

STATEMENT OF HON. LOIS HAIGHT HERRINGTON, ASSISTANT ATTORNEY GENERAL, OFFICE OF JUSTICE ASSISTANCE, U.S. DEPARTMENT OF JUSTICE

Ms. HERRINGTON. Thank you.

Senator DENTON. Your complete written testimony will be placed in the record, and if you will take 5 minutes to summarize your statement, we would appreciate it.

Ms. HERRINGTON. All right. Thank you very much, Mr. Chairman. I am very pleased to testify before you today on S. 1156, the Child Victim Witness Protection Act of 1985, and I am very appreciative of the personal commitment that you have demonstrated not only to victims of child abuse but to victims of violent crime in general in the United States.

Your leadership has kept public attention focused on these serious subjects. As you know this administration has demonstrated a strong commitment to both preventing child abuse and bringing the full force of the criminal justice system to bear against the perpetrators of crimes against children.

First, the President's Task Force on Victims of Crime and later, the Attorney General's Task Force on Family Violence, examined the treatment of children by the criminal justice system and made recommendations to improve the systems's response to child victims. In 1984, the administration proposed landmark legislation to provide Federal financial assistance to State crime victim compensation and crime victim assistance programs.

Under your outstanding leadership, and Senator Thurmond's leadership, Congress enacted the Victims of Crime Act of 1984, which accorded a priority to programs serving victims of child abuse.

Senator DENTON. If you will excuse me, Ms. Herrington, just for a moment.

Ms. HERRINGTON. Certainly.

Senator DENTON. Senator McConnell has arrived. I have already referred to your credentials and outstanding contribution in this field, Senator, and in the interest of our doing as much as we can in a given morning, I will request that you chair as much of this meeting as you can, and if necessary, we can resort to submitting the remainder of our questions for the record, and turn over the receipt of testimony to my staff general counsel, Mr. Richard D. Holcomb, as a means of expediting the clearance of this bill.

Senator MCCONNELL [presiding]. Thank you, Mr. Chairman. It has been musicial chairs this morning. The Judiciary Committee has, or subcommittees thereof, have three things going on at the same time. I apologize, Lois, for the interruption. Why don't you go ahead and finish your statement and then I will have a few words of my own.

Ms. HERRINGTON. All right. Fine, Senator. I was just telling the chairman about the Victims of Crime Act of 1984, and the fact that this administration's leadership in handling victims of crime and child victims of crime has been so outstanding.

In addition, the Department of Justice has established for the first time an Office for Victims of Crime, whose express function is to provide financial and technical assistance to victims of crime, especially child victims.

The Office for Victims of Crime has awarded several significant grants in the area of child victimization. A grant to the National Association of Attorneys General focuses specifically on the issues addressed by S. 1156. NAAG, as I may call them, is developing model legislation for the States on a number of criminal justice reforms principally benefiting child crime victims, including the admissibility of hearsay evidence at preliminary hearings, the need to expedite proceedings involving child victims, and the extension of statutes of limitations in child sexual assault cases.

The Office has also awarded a grant to the American Bar Association to develop model statutes, one of which would permit access by businesses and other organizations to the sex offense criminal history records of prospective employees, and volunteers, whose work would bring them into regular contact with children.

We have also recently approved an award to the ABA and to NAAG to begin the very important job of implementing their model statutes, so this is not simply statutes drawn up; it is implementation as will.

We expect that these two well-respected organizations, representing not only the legal profession but all the Attorney Generals in the United States, will be very successful in this endeavor.

The Office has also awarded grants to the National Sheriffs' Association and the National Association of State Directors of Law Enforcement Training—these associations train the trainers—for program development and training to improve law enforcement's ability to respond to child victimization.

Included in that program development and training would be investigative techniques, responsiveness to children, and sensitivity to the problem of continuances. I should also note that the Illinois Attorney General's Office has been awarded a grant to design a hospital medical and evidentiary protocol for the treatment of child and adult sexual abuse vicitims.

We believe that this grant will result in a model investigative protocol that can be used nationwide.

In addition, the Bureau of Justice Assistance has recently awarded a grant to the National Council of Juvenile and Family Court Judges for the purpose of training juvenile judges how to best handle child abuse cases.

The Office of Juvenile Justice and Delinquency Prevention has also just granted $650,000 to the National District Attorneys' Association to establish a resource bank for prosecutors needing information on techniques and procedures to use in child abuse cases.

OJJDP also provides funds to the Federal Law Enforcement Training Center to train State and local officers to handle child exploitation cases.

We have also sponsored two symposia on child victimization which I think are very important. One was by grant funds that supported the National Conference on Sexual Victimization of Children put on by Children's Hospital in Washington in 1984, and the other was the national symposium on child molestation, the first of its kind ever to deal specifically with this issue, and was held last year in the Great Hall of the Department of Justice.

We were able to bring together at this time top professionals in the fields of law enforcement, medicine, psychiatry, and victim services, to focus on the needs specifically of child victims. That report will be out within the month.

We must, however, recommend against enactment of S. 1156 at this time for several reasons, and this is very difficult. I know you understand my concern for child victims. However, the problem of improving the treatment of child victims in the courtroom may not require the additional expenditure of $10 million in Federal financial assistance.

We believe the most effective way to improve the justice system's response to child victims and witnesses involves educating the criminal justice system about the problem, and amending those State laws and procedures that too often serve only to victimize the children again.

That is who we have invested our grant funds in the development of model legislation and training that I alluded to earlier.

The procedural changes in question are not expensive, and in some circumstances, would likely save the State money, and States are beginning to realize this fact.

We believe that the development of such legislation is a far more cost-effective way of reaching some of the goals of S. 1156.

In addition, we do believe that the Victims of Crime Act already provides the states adequate authority and funding to finance the necessary courtroon reforms.

As I noted earlier, there is a priority for child sexual assault victims, as well as programs serving victims of sexual assault and spouse abuse. Under the statute, those programs may include "assistance in participating in criminal justice proceedings." The program guidelines proposed by my office assure that the States will provide substantial funding to child abuse programs.

In its first year, the act produced $68 million for the crime victims fund. Those funds are just now being awarded to State victim compensation and assistance programs.

It is, therefore, I believe, simply too early to predict the impact of the act on the proceedings that are the subject of S. 1156, especially when the crime victims fund reaches its $100 million cap.

It may well be that the Victims of Crime Act, as presently being implemented, will accomplish the ends you seek without a $10 million set-aside. Accordingly, we do not believe that a further earmarking of funds for this issue is warranted at this time.

We are also opposed to raising the $100 million cap on the crime victims fund that was set by Congress in the Victims of Crime Act only last year.

The cap was imposed as the result of an amendment introduced by Senator Thurmond in the Senate Judiciary Committee. I believe that the Senator's reationale in proposing the cap, and ours in concurring with it, was that it struck the proper balance between the needs of crime victims, and the needs of the general fund of the Treasury, where any excesses over $100 million is to be deposited. We believe that the cap should be retained for the reasons it was imposed in the first place.

Federal spending must be restrained in the face of our $200 billion deficit, and agains, I really believe we must see how far our $100 million program goes. It well may prove sufficient.

I want to ensure that our opposition to this legislation does not obscure the fact that your committee, Senator McConnell, and the administration are united, in our determination to stop the criminal victimization of our Nation's children. I hope that we can continue to work together to produce laws and programs that will keep our children safe from these terrible acts, and bring the full weight of the law to bear against their abusers.

Thank you, and I will be pleased to answer any questions that you may have.

[Prepared statement follows:]

PREPARED STATEMENT OF LOIS HAIGHT HERRINGTON

Mr. Chairman, I am pleased to testify before you today on S. 1156, "The Child Victim Witness Protection Act of 1985." I am very appreciative of the personal commitment that you and Senator Denton have demonstrated to not only the victims of child abuse, but to the victims of all violent crime. Your leadership has kept public attention focused on these serious subjects.

I would also like to advise you of the Administration's support for the objectives of this legislation and then address the specific provisions of S. 1156.

As you know, this Administration has demonstrated a strong commitment to both preventing child abuse and bringing the full force of the criminal justice system to bear against the perpetrators of crimes against children. First, the President's Task Force on Victims of Crime and, later, the Attorney General's Task Force on Family Violence examined the treatment of children by the criminal justice system and made recommendations to improve the system's response to child victims.

In 1984, the Administration proposed landmark legislation to provide Federal financial assistance to State crime victim compensation and crime victim assistance programs. Under Senator Thurmond's outstanding leadership, Congress enacted the Victims of Crime Act of 1984 which accorded a priority to programs serving victims of child abuse. In addition, the Department of Justice has established, for the first time, an Office for Victims of Crime (OVC) whose express function is to provide financial and technical assistance to victims of crime -- especially child victims.

OVC has awarded several significant grants in the area of child victimization. A grant to the National Association of Attorneys General (NAAG) focuses specifically on the issues addressed by S. 1156. NAAG is developing model legislation for the States on a number of criminal justice reforms principally benefiting child crime victims, including the admissibility of hearsay evidence at preliminary hearings, the need to expedite proceedings involving child victims, and the extension of statutes of limitations in child sexual assault cases.

The Office has also awarded a grant to the American Bar Association to develop model statutes, one of which would permit access by businesses and other organizations to the sex offense criminal history records of prospective employees and volunteers whose work would bring them into regular contact with children. We have also recently approved an award to the ABA and NAAG to begin the very important job of implementing their model statutes. We expect that these two well-respected organizations, representing not only the legal profession but every State Attorney General in the country, will be very successful in this endeavor.

The Office has also awarded grants to the National Sheriffs' Association and the National Association of State Directors of Law Enforcement Training for program development and training to improve law enforcement's ability to respond to child victimization.

I should also note that the Illinois Attorney General's Office has been awarded a grant to design a hospital medical and evidentiary protocol for the treatment of child and adult sex abuse victims. We believe that this grant will result in a model investigative protocol that can be used nationwide.

In addition, the Bureau of Justice Assistance has recently awarded a grant to the National Council of Juvenile and Family Court Judges for the purpose of training juvenile judges how to best handle child abuse cases. The Office of Juvenile Justice and Delinquency Prevention has also just granted $650,000 to the National District Attorneys' Association to establish a national resource bank for prosecutors needing information on techniques and procedures to use in child abuse cases. OJJDP also provides funds to the Federal Law Enforcement Training Center to train state and local officers to handle child exploitation cases.

We have also sponsored two symposia on child abuse. Our grant funds supported the National Conference on Sexual Victimization of Children put on by the Children's Hospital of Washington in April, 1984 and a national symposium on child molestation entitled "Protecting Our Children: The Fight Against Molestation", in October, 1984. I am particularly proud of this event because it was held in the Great Hall of the Department of

Justice and brought top professionals in law enforcement, medicine, psychiatry and victims services together to focus on the needs of child crime victims.

We must, however, recommend against enactment of S. 1156 at this time for several reasons. First, the problem of improving the treatment of child victims in the courtroom may not require an additional expenditure of $10 million in Federal financial assistance. We believe that a most effective way to improve the justice system's response to child victims and witnesses involves educating the criminal justice system about the problem and amending those State laws and procedures that too often serve only to victimize the children again. That is why we have invested our grant funds in the development of the model legislation I alluded to earlier. The procedural changes in question are not expensive and, in some circumstances, would likely save the States money. We believe that the development of such legislation is a far more cost-effective way of reaching the goals of S. 1156.

In addition, we believe that the Victims of Crime Act already provides the States adequate authority and funding to finance the necessary courtroom reforms. As I noted earlier, the Act requires the State to accord "priority" to programs serving victims of child abuse, (as well as programs serving victims of spouse abuse, and sexual assault). Under the statute, those programs may include "assistance in participating in criminal justice proceedings." The program guidelines proposed by my office assure that the States will provide substantial funding to child abuse programs.

In its first year, the Act produced $68 million for the Crime Victims Fund. Those funds are just now being awarded to State victim compensation and assistance programs. It is, therefore, simply too early to predict the impact of the Act on the proceedings that are the subject of S. 1156, especially when the Crime Victims Fund reaches its $100 million cap. It may well be that the Victims of Crime Act as presently being implemented will accomplish the ends you seek without a $10 million set-aside. Accordingly, we do not believe that a further earmarking of funds for this issue is warranted at this time.

We are also opposed to raising the $100 million cap on the Crime Victims Fund that was set by Congress in the Victims of Crime Act only last year. The cap was imposed as the result of an amendment introduced by Senator Thurmond in the Senate Judiciary Committee. The Chairman's rationale in proposing the cap, and ours in concurring with it, was that it struck the proper balance between the needs of crime victims and the needs of the General Fund of the Treasury, where any excess over $100 million is to be deposited. We believe that the cap should be retained for the reasons it was imposed in the first place. Federal spending must be restrained in the face of our $200 billion deficit and, again, we must see how far our $100 million program goes. It may well prove sufficient.

Finally, we would like to point out some technical problems in the fund distribution provisions of S. 1156. Section 4 of the bill would make available another $10 million in the Crime Victims Fund to finance the purposes of the legislation. Under new section 1404A(b)(2), each State would receive $200,000 plus any amounts remaining from the $10 million, distributed on a population basis. As defined in the Victims of Crime Act, however, "State" includes all territories and possessions of the United States. The 57 jurisdictions included in this definition could not, mathematically, each receive $200,000 (or more) from the allotted $10 million. Even if "State" were defined to mean only the 50 States, there would never be any remainder left over to be distributed on a population basis.

I want to ensure that our opposition to particular provisions of this legislation does not obscure the fact that your Committee and the Administration are united in our determination to stop the criminal victimization of our Nation's children. I hope that we can continue to work together to produce laws and programs that will keep our children safe from these terrible acts and bring the full weight of the law to bear against their abusers.

Thank you. I will be pleased to respond to any questions you or members of the Committee may have.

Senator McConnell. Thank you, Miss Herrington. I have an opening statement which I would like to have inserted in the record.

[Prepared statement follows:]

PREPARED STATEMENT OF HON. MITCH McCONNELL, A U.S. SENATOR FROM THE STATE OF KENTUCKY

Mr. Chairman, again I wish to commend you for introducing S. 1156. This is the second hearing held to review this bill and I know the testimony presented today will be every bit as important as that presented to us on September 3.

At the first hearing we heard how extensive the problem of child abuse is. Judge Mark Kennedy, for example, pointed out that while we have been successful in eliminating the threat of childhood disease, we have been unable to combat the greatest killer of infants under 1 year of age—physical abuse. Abuse of children is an unconscionable crime but it is more disturbing, Mr. Chairman, when our judicial system intimidates children to the point that truth is blurred and offenders go free.

In our first hearing it became evident that the courtroom is presently not a friendly place for children who are prepared to accuse their molesters. I should say that we have nothing less than an indictment against the judicial system when court proceedings prove traumatic for the children involved and parents withdraw complaints in order to protect their children from being victimized a second time. I realize that having a child testify is sometimes a slow and difficult process and that it is made more difficult when the accused is a parent. However, when the accused is not a family member, justice should be swift.

The problem is that the criminal justice system is designed to provide safeguards for the accused—such as the right to trial and the right to be confronted by an accuser. Yet, the child accuser is rarely equipped with the verbal or developmental skills to function as an equal in our traditional adversarial system. This makes it easy for defense counsel to frighten or intimidate a child and keep them from testifying freely as would an adult.

It is my belief that the criminal justice system should be modified to be more responsive to the needs and the nature of children. Accordingly, I am pleased that you have convened this hearing and I hope that we will soon see this bill, S. 1156, become law.

Senator McConnell. As you may or may not recall several years ago, I headed an organization called the Kentucky Task Force on Exploited and Missing Children, which held a variety of hearings around the State. As a result of those hearings new legislation as proposed, and one of the features was for pretrial videotape testimony.

My questions, Ms. Herrington are: First, how many States have now gone to that kind of legislation, and second, has there been any Federal legislation developed—at the time we passed that legislation in Kentucky there was no definitive Federal court judgment about the constitutionality of it. I wondered if anything has developed in that area since that time?

Ms. Herrington. Let me answer the first question first. I think there are approximately eight States that have addressed the issue of the videotaping, and I would like to respond to that in writing to make sure I am exact.

Fifty percent of the States in the United States, approximately, do allow hearsay at the time of preliminary hearing.

We also found that in the sexual symposium that I told you about, where we brought forth experts in this area this last year, that videotaping is not the panacea we once believed it was. There are a lot of problems with it and although the ability to videotape I think is an important ability to have, we must also look at the problems dealing with that issue. Who is doing the intial questioning? Do they have the proper training? Are they leading the children? Are they having counseling before or after, and is that counseling that enables them to cope somehow tainting the evidence?

And there are a lot of issues that we have found from videotaping that have brought us from our very first beginnings of, "this is the answer," to "we should look at this very, very carefully."

I have to tell you that there are many conferences going on nationwide now. There are many people addressing just this issue.

We recently brought together a group of investigators and prosecutors, and also following that, psychiatric people that had been dealing with ongoing child molestation cases to find out how they were handling such videotaping.

We are also working with researchers now to develop procedures and standards for videotaping, but it is an issue of great ambiguity at this time.

Senator McCONNELL. We are going to have to do something in this whole area.

Ms. HERRINGTON. Absolutely.

Senator McCONNELL. It is so difficult for a child witness to present testimony in the current court atmosphere. One of the things we were trying to do in Kentucky was to insulate, to the extent you could, constitutionally, protect the child victim, from the kind of courtroom setting in which he sits down across from the defendant, and is, in many instances, thoroughly intimidated by that setting. I am wondering, other than the videotape, the pretrial videotape testimony, if you have any other thoughts about how you might get at that particular problem?

Ms. HERRINGTON. Well, I think it is vitally important that the National Association of Attorneys General is working to make hearsay evidence admissible at preliminary hearings. We have seen the court that process causing perhaps the most harm to child victims is a court process that is simply not necessary. There is no constitutional right of confrontation at a preliminary hearing. Yet many States subject child victims to this hearing, without a jury to restrain the often harsh line of questioning from a defense attorney. This initial cross-examination is simply not needed. An investigator or therapist should be allowed to present the evidence instead of the child.

So I think one of the most important things we can do is to assure that hearsay is admissible at preliminary hearings. We have also found in talking with our prosecutors a great deal in the last year, and the prosecutors that are working on this new research project, that they desperately want the children in many of these trials, and they feel that now, with good evidence procedures, and good education of when to object—you know—like questions asked and answered—that they are better able to protect their children in a trial situation and they are much more knowledgeable about it.

I do not mean after we finish—I mean, there is just tons of training left to do and we are working on that daily. But education has had a tremendous impact in this area, and not only the education of the public, but the education of the criminal justice system in handling child abuse cases.

Senator McConnell. The thing that I am really concerned about is that 99 out of 100 children who are, say, 11 or under, are not likely to be lying about being a victim of sexual assault.

Ms. Herrington. I agree.

Senator McConnell. And one of the exasperating things is getting the likely truth of the allegation through the criminal justice system with a little justice at the end, and I do not know whether pretrial videotape testimony is going to end up being the answer or not, but I, for one, think it is important enough to try it.

With reference to your particular testimony, I gather you are saying that further work needs to be done. But are you saying, that enough money has already been allocated for this purpose and therefore given budget constraints, or you are just not convinced that we need to do anything additionally at this point?

Ms. Herrington. Yes, sir. That is approximately it. I think that we really should see how far this money is going to go. Will this do it?

With child victims of sexual abuse being a priority in the States, let's see what the Victims of Crime Act does. We are watching it very carefully, from the crime victims fund and the money is just going out right now to the States.

Senator McConnell. We have got a vote going on so I want to summarize by saying to you, Miss Herrington, how much I personally appreciate, as someone who has been active in this field of sexual assaults against children for a long time, the sensitivity of this administration to this issue.

The President's leadership on the question of missing and exploited children has been exemplary. The response of the Justice Department has been wonderful, and even though there have been occasional arguments over funding, like I suppose we are having here today, it seems to me the trust of the administration's approach on this issue has been commendable. So I take this opportunity to express that to you.

Ms. Herrington. Thank you.

Senator McConnell. I also have one final question, although unrelated to this, and that is, at what point do you envision the child partnership moving forward?

Ms. Herrington. We envision it moving forward this January—we thought about December, and we thought, well, wait until January. Approximately the second week of January, Senator.

Senator McConnell. Well, I have some optimism and I hope that we can proceed after the first of the year.

Ms. Herrington. I am very optimistic about it now. I think it is a good thing.

Senator McConnell. OK. I do not know whether Senator Denton has any questions to submit for the record, or not. He does, and that will be done.

[The questions of Senators Denton and Specter follow:]

RESPONSES OF LOIS HAIGHT HERRINGTON TO WRITTEN QUESTIONS FROM SENATOR DENTON

6TH AMENDMENT RIGHT TO CONFRONT ACCUSOR

Question. As you know, the sixth amendment provides the accused with the right "to be confronted with the witnesses against him." Any move to balance that right to confrontation with a child victim's right to be protected has raised constitutional questions.

Can you reconcile a modification of the hearsay rule, the competency rule or the use of videotaping or closed circuit television with the sixth amendment rights of the accused?

Answer. A modification of the hearsay rule to make admissible videotaped testimony or live video testimony at trial may present confrontation clause problems. State courts are split on the issue with several states using some modification of the hearsay rule while allowing the defendant to cross exam the child unless the child is unavailable to testify. The Supreme Court and the Federal Courts of Appeals have not addressed the question. Plainly, the confrontation clause is less likely to invalidate live closed circuit television testimony because confrontation is not denied.

We strongly feel that, at the very least, hearsay evidence should be allowed at preliminary hearings on child abuse cases as confrontation is not an issue at this stage. It is vitally important that the National Association of Attorneys General is working to make hearsay evidence acceptable at preliminary hearings. We have seen that the court process causing perhaps the most harm to child victims is a court process that is simply not necessary. There is no constitutional right of confrontation at a preliminary hearing. However, many states subject child victims to this hearing, without a jury to restrain the often harsh line of questioning from a defense attorney. This initial cross-examination is simply not needed. An investigator or therapist should be allowed to present the evidence instead of the child.

INTERDISCIPLINARY TEAMS

Question. One of the suggested procedures, in S. 1156, which could minimize the additional trauma to the child victim would include "establishing interdisciplinary teams of child abuse professionals. . . ."

This procedure was taken from the Attorney General's Task Force on Family Violence. Could you expand on the Department's support for the "interdisciplinary team" approach?

Answer. The President's Task Force on Family Violence recommended that a multi-disciplinary team representing all groups involved in family violence—law enforcement, prosecutors, courts, protective service agencies, victim advocate units, and health and mental health facilities—should be established in each community. There is an interrelationship among the legal, health, social service and educational responses to family violence and a multi-disciplinary team should formulate a systematic approach with defined protocols that minimize the trauma suffered by the victim and maximize the opportunity to change the abusive patterns of the offender.

This team approach and the protocols developed for each community agency will aid in reaching troubled families and delivering services that protect victims, stop the violence, and address its underlying causes and effects. The team approach should result in more efficient use of expertise and information and ensure appropriate service referrals for victims and abusers.

Although multi-disciplinary teams are involved in many aspects of the criminal justice system, they can be particularly effective in addressing the special needs of physically and sexually abused children. Often, abused children suffer additional harm from the justice system and other community agencies when they are repeatedly interrogated. They frequently are subjected to many grueling and detailed investigative interviews and these duplicative and insensitive interview procedures often lead to greater trauma for the child and family and can result in less effective intervention and prosecution.

Multi-disciplinary teams can avoid the repeated interviewing of children. One team member, knowledgeable regarding the legal process and treatment considerations, with consultation from other team members, can conduct a videotape interview of the victim. Other team members can observe the actual interview from behind one-way mirrors and then receive a copy of the tape recording for future use. By fitting the interviewer with an earpiece, other team members can suggest additional questions that may be necessary based on the victim's answers. An alternative team interview method involves one joint interview by all persons needing information on the case. This interview also could be videotaped or recorded for future reference.

It should be pointed out, however, that multi-disciplinary teams are advisory in nature and their recommendations are not binding. It is important to note that the prosecutor in a child abuse case will proceed in cases where he may differ from the recommendations of a multi-disciplinary team. We are hopeful this will not happen often but, when it does, the prosecutor should explain why he differs with the team recommendations. The important fact to remember is that actions resulting in physical and sexual abuse against children are crimes and the prosecutor is the one who has the responsibility to decide whether to proceed or not.

LEADING QUESTIONS

Question. Another of the suggested procedures in S. 1156 which would improve the chances of successful criminal prosecution in child abuse cases would include a modification of the rules of evidence to allow the prosecuting attorney to ask leading questions of the child victim.

Does the Department believe that the use of leading questions by the prosecutor would be helpful in protecting the child victim?

Answer. The Department believes that the use of leading questions by the prosecutor, with appropriate safeguards, can assist in the protection of the child victim. Questions requiring a yes or no answer would be helpful to a child who has difficulty in articulating complete and detailed sentences. It is much easier for a three or four-year old to respond to this type of question than an open-ended question. Leading questions can help the child to focus and will shorten the length of time needed for questioning.

However, the danger in using leading questions with child, as well as adult, witnesses is that their suggested nature could result in inaccurate testimony. In order to limit this potential problem, appropriate safeguards could be put into effect. One safeguard suggested is to have leading questions be screened by the judge before they are presented to the child. This issue needs further examination by the states, several of which are currently using the procedure of asking leading questions. Another safeguard proposed is to permit leading questions to be asked of only children under an appropriate age determined by the states.

DEPARTMENT RESPONSIBILITY FOR GRANT PROGRAM

Question. As you are aware, my bill would locate the Child Victim Witness Protection Progam in the Department of Justice to administer. I believe that this is appropriate for at least three years.

First, the program focuses on the treatment of child victims in the justice system and the prosecution of offenders. Second, child abuse is a crime, and putting the progam in the Justice Department recognizes the key role played by the criminal justice system in responding to child abuse.

Third, I am convinced that prosecutors, as the chief law enforcement officers in their communities, are in the best position to take the lead in mobilizing agencies and professionals to make the changes needed to implement an effective and humane response to child abuse.

It is my understanding that a similar legislative proposal would place this program with the Department of Health and Human Services. What are your thoughts on this matter?

Answer. In our view, if either S. 1156 or similar legislation (S. 140) is enacted, its grant mechanism should be administered by the Department's Office of Justice Programs (OJP) which, through its Office for Victims of Crime (OVC), has been instrumental in initiating programs for victims of child sexual abuse. Working with the National Sheriff's Association, the National Association of State Directors of Law Enforcement Training, and the National District Attorney's Association, OVC has developed training guidelines and programs for law enforcement and prosecutor personnel. These programs emphasize improved treatment of victims and especially encourage greater sensitivity toward the needs of child victims.

OVC assisted in developing the Victims of Crime Act of 1984. The Act establishes a Crime Victims Fund in the U.S. Treasury which is being used to provide Federal financial assistance to state victim compensation programs and to public and private programs in the states that offer direct services to victims of crime. The program guidelines for the Act assure that the states will accord a priority and substantial funding for programs serving victims of child abuse.

OVC has the express function to provide programs providing services to victims of crime—especially child victims—and has awarded several significant grants in the area of child victimization. A grant to the National Association of Attorneys General (NAAG) focuses specifically on the issues addressed by S. 1156 and S. 140. NAAG is developing model legislation for the states on a number of criminal justice reforms principally benefiting child crime victims.

OVC has also awarded a grant to the American Bar Association (ABA) to develop model statutes, one of which would permit access by businesses and other organizations to the sex offense criminal history records of prospective employees and volunteers whose work would bring them into regular contact with children. Additionally, the Office recently approved an award to the ABA and NAAG to begin the very important job of implementing their model statutes.

Additionally, OJP, through the Office of Juvenile Justice and Delinquency Prevention (OJJDP), has funded the establishment and operations of the National Center for Missing and Exploited Children. OJJDP has just granted $650,000 to the National District Attorney's Association to establish a national resource bank for prosecutors needing information on techniques and procedures to use in child abuse cases. OJJDP also provides funds to the Federal Law Enforcement Training Center to train state and local officers to investigate child exploitation cases.

OJP, through its Bureau of Justice Assistance (BJA), administers a criminal justice discretionary grant program which provides financial assistance to demonstration projects that are designed at improving the prosecution of child sexual and physical abuse cases. BJA plans to award grants to establish pilot projects located within prosecutors offices that effectively prosecute those accused of physically and sexually abusing children while reducing the trauma to the child victims and their families. BJA also provides technical assistance and education and training for criminal justice personnel involved in child abuse cases. A recent grant was awarded by BJA to the National Council of Juvenile and Family Court Judges for the purpose of training juvenile judges how to best handle child abuse cases.

OJP is also working with the National Crime Prevention Council to promote child safety by assisting local communities across the country in sponsoring "Child Safety Days." These events are designed to provide parents and guardians with preventive information about child abduction and abuse.

As you are aware, the grant mechanism in S. 140 would be administered by the Department of Health and Human Services. It appears to us unwise to break out authority for the grant program in S. 140 from the other closely related victims of crime and family violence programs OJP administers. Contrary to the intent of S. 140, duplication of effort and inequitable allocation of resources would likely result. It is unreasonable to expect these problems to be eliminated by stipulating in S. 140 that there be semiannual meetings among agency heads involved in child abuse prevention and treatment.

At the minimum, the Department of Health and Human Services should be required to consult with OJP prior to awarding grants. Even that alternative, however, would create inefficient fragmentation of responsibility and control. Moreover, this proposed grant program, which is in large part aimed at obtaining more convictions in child abuse cases, is far more appropriately located in DOJ because of its work with state and local criminal justice agencies.

FUNDING MECHANISM

Question. I note your concern with the proposal to tap monies from the Crime Victim's Fund. Can you make any suggestions for alternative funding which would not increase the burden to the Federal budget or would endanger the current funding of Juvenile Justice and Delinquency Prevention Programs?

Answer. Although we agree with the intent of S. 1156, we believe that the Victims of Crime Act which Congress approved last year already provides the states adequate authority and funding to finance the child protection reforms advocated in S. 1156. The Victims of Crime Act of 1984 was enacted in an effort to provide Federal financial assistance to state crime victim compensation and assistance programs and accorded a priority to programs serving victims of child abuse. Under the statute, those programs may include "assistance in participating in criminal proceedings". The program guidelines for the Victims of Crime Act assure that the states will provide substantial funding to child abuse programs. In addition, a number of other program activities of OJP are designed to assist efforts to combat child abuse.

In its first year, the Act produced $68 million for the Crime Victims Fund. Those funds are just now being awarded to state victim compensation and assistance programs. It is, therefore, simply too early to predict the impact of the Act on the proceedings that are the subject of S. 1156, especially when the Crime Victims Fund reaches its $100 million set-aside. We do not believe that a further earmarking of funds for this issue is warranted at this time.

RESPONSES OF LOIS HAIGHT HERRINGTON TO WRITTEN QUESTIONS FROM SENATOR SPECTER

Question No. 1. Based on your experience, what is the potential for psychological trauma to children resulting from their involvement in the prosecution of child sexual abuse cases?

How, in your opinion, will the provisions in this bill reduce this trauma for the child victim witness?

Answer No. 1. Testifying can be an overwhelming and extremely trying experience for any victim of crime but the ordeal can be even more devastating for child victims of sexual abuse who must publicly reveal the humiliating and embarrassing details of abuse. The child must undergo multiple interviews; repeated questioning on such a personal and painful subject inevitably instills fear.

Children are especially vulnerable in the courtroom for they typically feel they are somehow to blame for their victimization. They are often treated as if they had something to be ashamed of, rather than the abusers. Repeating and reliving the abuse through direct testimony and vigorous cross-examination further compounds the children's guilt and confusion. They become the pivotal players in an unfolding adult drama they cannot understand. The police, prosecutors and defense attorneys can be effective in lessening this trauma for child victims and helping the children to put the crimes behind them.

The initial trauma inflicted upon the very young must not recur in the courtroom. While we are teaching children to speak out and report their abuses, we must also guarantee them that they will not be further abused and traumatized by the administrative and judicial systems.

As recommended by the President's Task Force on Family Violence, judges should adopt special rules and procedures that enable child victims to more comfortably and effectively communicate the harm they have suffered. These should include: the use of hearsay evidence at preliminary hearings; appointment of a special volunteer advocate for children when appropriate; and presumption that children are competent to testify; allowing the child's trial testimony to be presented on videotape with agreement of counsel; flexible courtroom settings and procedures; and carefully managed press coverage.

While the Child Witness Protection Act, S. 1156, seeks to further many of these recommenations through its proposed grant program to the states, we feel that the programs that are already underway within DOJ will be extremely effective in accomplishing such recommendations.

Question No. 2. What is your view regarding the source and level of funding for this legislative initiative?

Answer No. 2. Although we agree with the intent of S. 1156, we believe that the Victims of Crime Act which Congress approved last year already provides the states adequate authority and funding to finance the child protection reforms advocated in S. 1156. The Victims of Crime Act of 1984 was enacted in an effort to provide Federal financial assistance to state crime victim compensation and assistance programs and accorded a priority to programs serving victims of child abuse. Under the statute, those programs may include "assistance in participating in criminal proceedings." The program guidelines for the Victims of Crime Act assure that the states will provide substantial funding to child abuse programs. In addition, a number of other program activities of OJP are designed to assist efforts to combat child abuse.

Question No. 3. How do you view this legislation in light of the Senate's passage of S. 140, the "Children's Justice Act?" Do you believe these bills are complementary regarding approach, goals, and funding sources?

Answer No. 3. In its first year, the Act produced $68 million for the Crime Victims Fund. Those funds are just now being awarded to state victim compensation and assistance programs. It is, therefore, simply too early to predict the impact of the Act on the proceeding that are the subject of S. 1156, especially when the Crime Victims Fund reaches its $100 million set-aside. We do not believe that a further earmarking of funds for this issue is warranted at this time.

While we disagree with the source and level of funding for S. 1156 and S. 140, we do agree with the intent of both bills. We do have problems, however, with the way S. 140 proposes that states achieve child protection reforms. Several amendments to this bill were accepted during consideration of this bill by the Senate Labor and Human Resources Committee and the full Senate but these amendments do not make S. 140 any less objectionable to the Department's Office of Justice Programs.

No changes have been made in the grant requirements in S. 140 despite OJP's strong objection to them at the time the bill was being considered by the Senate Labor and Human Resources Committee. The grant mechanism requires a state to implement its child sexual abuse program, which is likely to involve considerable expense, before becoming eligible for a grant to support the program. The bill would be more workable if it conditioned the Federal grant funds for specific limited uses. As passed by the Senate, however, S. 140 makes it unlikely that many states would undertake the initial expense to become eligible.

In S. 140, there is no formula for the distribution of grant funds to the states. The absence of a formula could result in the entire appropriation being allocated to one or several states rather than on some rational basis such as need, population, or other factor.

Unlike S. 1156, the grant mechanism in S. 140 would not be administered by the Department of Justice but, instead, by the Department of Health and Human Services. It appears to us unwise to break out authority for the grant program in S. 140 from other closely related victim of crime and family violence programs the OJP administers. Contrary to the intent of S. 140, duplication of effort and inequitable allocation of resources would likely result. It is unreasonable to expect these problems to be eliminated because S. 140 was amended to stipulate that there be semiannual meetings among agency heads involved in child abuse prevention and treatment.

In our view, if S. 140 is enacted, its grant mechanism should be administered by OJP which, through its Office for Victims of Crime (OVC), has been instrumental in initiating programs for victims of child sexual abuse. Working with the National Sheriff's Association, the National Association of State Directors of Law Enforcement Training, and the National District Attorney's Association, OVC has developed training guidelines and programs for law enforcement and prosecutor personnel. These programs emphasize improved treatment of victims and especially encourage greater sensitivity toward the needs of providing services to victims of crime—especially child victims—and has awarded several significant grants in the area of child victimization.

The proposed grant program in S. 140, which is in large part aimed at obtaining more convictions in child abuse cases, is far more appropriately located in DOJ because of its work with state and local criminal justice agencies.

Senator **McConnell**. I apologize to you but we are going to have to recess this hearing so I can go and vote.

Ms. **Herrington**. Thank you, Senator.

[A brief recess.]

Senator **McConnell**. I was just told by the office that there is not a vote going on. I think we will move on to the next witness. Thank you very much, Ms. Herrington.

Ms. **Herrington**. Thank you.

Senator **McConnell**. I would like to call now Ellen Greenberg, administrative officer for child, youth, and family policy of the American Psychological Association.

STATEMENT OF ELLEN F. GREENBERG, PH.D., ADMINISTRATIVE OFFICER FOR CHILD, YOUTH, AND FAMILY POLICY, AMERICAN PSYCHOLOGICAL ASSOCIATION

Dr. **Greenberg**. Thank you, Mr. Chairman. In light of the press of events today, per usual, I will make my remarks brief. I am pleased to be here today to testify on behalf of the American Psychological Association on the Child Victim Witness Protection Act, S. 1156.

I commend your efforts and those of the other members of the subcommittee for providing Federal assistance to States to safeguard the interests and welfare of child victims in legal proceedings, as evidenced by the introduction of this much needed piece of legislation.

I will briefly summarize my statement in terms of three major points. First, the incidence and psychological aspects of child abuse; second, the competence of children to testify as witnesses; and third, needed State reform to aid child abuse victims.

According to the Department of Health and Human Services, there are now an estimated 1.4 million children who are victims of child abuse and neglect each year. Data further indicate that the reported cases of child abuse have increased more than 120 percent nationwide between 1976 and 1982. It is also believed that this is merely the tip of the iceberg, since many incidents go unreported due to funding and staff cutbacks in human service agencies.

Although sexual abuse accounts for less than 10 percent of the total number of reported child maltreatment cases, it has recently received widespread national attention arising from major cases like the *McMartin Pre-School* case in Manhattan Beach, CA, and other major cases in Minnesota, New York, Illinois, and Florida.

The APA is committed through research, clinical practice, and community intervention to find ways to prevent child abuse and to aid its victims. We have many divisions which address children's issues, and we recently established a committee specifically on children, youth, and families, to examine child abuse and other issues from multiple perspective

We, as psychologists, try to enable children to reach adulthood and achieve their full potential unimpaired by physical, emotional or mental handicap. The immediate and long-term effects of child abuse are often traumatic and severely impede normal child development. The early symptoms of child abuse may include withdrawal from others, regression to a more infantile stage of development, as evidenced by bedwetting and thumbsucking behaviors, sleep disturbances, sexually-oriented play with dolls, depression, and school-related problems.

Long-term effects may include disturst of others, depression, destrubed interpersonal relationships, self-destructive behavior such as alcohol and drug abuse and suicide, and the perpetuation of abuse within or outside the victim's family.

While we must focus on the causes of child abuse to curb and prevent this most serous problem, our experience with recent cases has shown us that we must also be able to work effectively with the child victim once he or she enters the legal system. We must be especially mindful of the potential for a second victimization of the child in the process of seeking justice and retribution for the first.

I have already mentioned the psychological problems which arise from child abuse. When the child enters the legal system, he or she is often removed from the family which may be the only support system that the child has. Child victims are often repeatedly interviewed by people such as police officers, psychologists, social workers, district attorneys, and other court personnel. It is a highly traumatic experience for many children. The may find themselves on a witness stand with their legs dangling off the floor, not being able to comprehend what the purposes of these proceedings are. They may be interviewed in police stations which are very frightening to children, or in the judge's chambers and confronted with the judge's long black robes, for instance.

And the whole experience, as you mentioned earlier, is highly traumatic for children. There must be some alternative to exposing a child to those types of circumstances.

With respect to children's competence to testify in court, the basic test is whether or not the child has sufficient intelligence and ability to give reliable and relevant testimony that could be of assistance to the court. As you mentioned, many State statutes presume children below a certain age, for example, 10 or 12, as incompetent to testify.

Psychological research points to the contrary, however. We have evidence that children as young as 4 or 5 years of age are competent to testify. It has been recommended by Assistant Attorney General Herrington's Task Force on Family Violence that judges adopt a presumption that children are competent to testify regardless of their age, and that it would be up to the jury to decide the credibility of their testimony. The factors that determine children's competence to testify are basically moral development and cognitive development.

The key issue in moral development is whether children can distinguish truth from falsehood when giving testimony. Studies have found that they can. More specifically, there is no significant relationship between honesty and age. It is generally believed that in only 2 to 5 percent of all cases children have fabricated allegations of child abuse.

When we have seen fabrications, as perhaps in the Jordan, Minnesota case, it is often as a result of parental influence, suggestive questioning, and repetitive interviews over long periods of time.

Unfortunately, we do not have data indicating how often children testify as to child abuse, or how many interviews they are exposed to. One study I am familiar with, though, showed that 60 percent of child sexual abuse cases go to court, and that the average number of interviews that children were subjected to in those cases was seven per child, which is outrageous.

With regard to memory skills, we have found that children recall events just about as well as adults. While children may not volunteer as much information upon first questioning, if questioned in a very direct and straightforward manner, they will recall the salient features on the event. Thus the extent of their memory skills would not be at all detrimental to their testimony.

As far as the need for legal reforms, as it is essential, I mentioned earlier, that the child be placed in a supportive environment, with a sensative and trained support person to respond to his or her needs.

We have a presumption in the law, and I think rightfully so, that we should maintain family privacy at all cost. But in cases of family breakdown, we cannot depend on the parents to advocate for the best interests of their child. In this instance, we need some type of support person who is knowledgeable and helpful, to guide the child through the legal process.

We also need special training, as provided for in S. 1156, for those involved with child abuse. This would be both in terms of child development and legal knowledge for both the law enforcement system and for the mental health system. We cannot presume that either profession has been adequately trained in terms of child development and child sexual abuse, specifically. This is true for mental health personnel, and certainly for legal personnel. However, often attorneys go through law school without taking a course in family law.

Senator McConnell. Can I interrupt you for just a moment? I have to go and preside over the Senate, and I am going to turn it over to the counsel here. But I want to ask you one question: Could you please summarize again for me your testimony with regard to the competence of child witnesses.

You say there are no significant impediments or no real reason to believe that a child witness is not as competent as an adult when properly examined?

Dr. Greenberg. That is true.

Senator McConnell. Thank you.

Dr. Greenberg. The other reforms in S. 1156 include videotaping and closed circuit television which would preclude the necessity of the child's testifying in court. These reforms would be highly desirable.

What I am saying, in a nutshell, is that while children are generally competent to testify, if it is at all possible for them to participate without testifying in court, that would be more desirable. Some experts are saying, though, that the courtroom experience could be cathartic for children, by giving back to them that sense of power and control over their lives, which they have lost in the victimization experience. But I would say that the majority view testifying in open court as generally very traumatic to children and something to be avoided, if at all possible.

As far as the two major goals of S. 1156, that is, reducing the potential trauma to the child which could result from a second victimization while involved in the court process, and also, facilitating the criminal prosecution of child abusers, there are various provisions included in the legislation to accomplish these goals. We believe that this legislation is an incredibly worthy effort to pursue.

There is one thing that we would like to stress, though. Some questions have risen as to the constitutionality of some of these provisions, like videotaping and closed circuit television which, as we mentioned in prior testimony, need to be closely evaluated. We believe that these individual reforms should also be evaluated, before being adopted on a large scale.

We strongly believe that S. 1156 which gives Federal assistance to the States to enact reforms which are appropriate for each given State, is certainly meritorious and should be viewed very favorably by the Senate.

In closing, I may disagree with the previous witness in commenting on what I view as a very innovative funding mechanism for the proposed legislation. I do not believe that the Victims of Crime Act adequately addresses the needs of child abuse victims. It is true, however, that there are two key provisions in the Victims of Crime Act which would be relevant to child abuse.

One of them is in the victims compensation section of the act, which states that professionals may be compensated for medical expenses, including mental health counseling and care. This provision would clearly be relevant to a child abuse victim. The other provision is in the victims assistance portion of the act, which establishes that States have to certify that priority is given to aid victims of child abuse, sexual assult, and spousal abuse.

Although there is a provision in the Victims of Crime Act specifically dealing with assistance in legal proceedings, it does not involve State reforms. Rather, it refers to victims' assistance programs being funded to provide legal assistance to victims, such as getting them to court. It does not address hearsay exceptions and all the other reforms provide for in this bill that are really critical to facilitating children's participation in legal proceedings.

There is a balance that must be struck here between meeting the needs of the child and seeking justice by prosecuting the offender. We maintain that this bill achieves that balance very nicely and is absolutely essential.

In closing, I would like to thank you for the opportunity to testify on S. 1156. I believe that this bill reflects psychological knowledge regarding the competence of children to testify in court, provides a novel approach to reducing the potential trauma which might arise from children's courtroom participation, and strives to further the chances of successful legal action in these cases.

If the American Psychological Association can be of any further assistance to the subcommittee, please do not hesitate to call upon us. I would be happy to answer any questions that you might have.

Mr. HOLCOMB.. Thank you, Dr. Greenbert. Senator Denton and Senator Specter will have some question to submit to you for written response and we would ask that you respond to them as quickly as possible.

Dr. GREENBERG. I will be happy to do so. Thank you.

[Statement and responses to written questions follow:]

PREPARED STATEMENT OF ELLEN F. GREENBERG

Mr. Chairman and Members of the Subcommittee on Juvenile Justice, it is indeed an honor to be invited here today to testify on behalf of the American Psychological Association on S.1156, the "Child Victim Witness Protection Act of 1985." I commend your efforts to provide Federal assistance to states to safeguard the interests and welfare of child victims in legal proceedings, as evidenced by the introduction of this much needed piece of legislation.

I am Dr. Ellen F. Greenberg, Administrative Officer for Child, Youth and Family Policy at the American Psychological Association (APA). For the past three years, while working at APA and previously as a Congressional Science Fellow on the Subcommittee on Juvenile Justice, I have been actively involved in the development of Federal policies to prevent child victimization and to provide psychological counseling and legal assistance to its victims. In keeping with the more traditional role of a clinical psychologist, I have also conducted my own empirical research on the competence and willingness of children to participate in legal proceedings.

In my testimony, I will address the incidence and psychological aspects of child abuse, the competence of children to present reliable testimony, and the need for state reforms to aid child abuse victims, as proposed by S.1156.

The Serious Problem of Child Abuse

According to the U.S. Department of Health and Human Services (DHHS), an estimated 1.4 million children and youth are victims of child abuse and neglect each year. This serious and growing national problem knows no socioeconomic, racial or geographic boundaries -- incidence rates are similar in urban and rural areas. According to a 1984 DHHS-sponsored study conducted by the American Humane Association, the reported cases of child abuse and neglect increased more than 120 percent nationwide between 1976 and 1982. The study also indicated that the massive increase in child abuse reports may be only the "tip of the iceberg," since many maltreatment incidents may go unreported due to funding and staff cutbacks in human services agencies. Although sexual abuse accounts for less than 10 percent of all reported child maltreatment cases, it has recently received widespread national attention arising from the McMartin Pre-School case in Manhattan Beach, California, and subsequent major cases in Minnesota, New York, Illinois and Florida. It is now estimated that 10 to 13 percent of American women have been sexually victimized by an older male relative.

The APA is committed through research, clinical practice and community intervention to finding ways to prevent child abuse and aid its victims. In addition to its numerous divisions that focus on children's issues, the APA recently established a Committee on Children, Youth and Families to bring together psychologists with different areas of expertise to tackle serious problems facing our youth. One of their priorities will be the problem of child abuse.

We as psychologists strive to enable children to reach adulthood and achieve their full potential unimpaired by physical, emotional or mental handicap. The immediate and longterm effects of child abuse are often traumatic and severely impede the normal process of child development. The early symptoms of child abuse may include withdrawal from others, regression to a more infantile stage of development (as evidenced by behaviors such as bedwetting and thumbsucking), sleep disturbances, sexually-oriented play with dolls, depression and school problems. Longterm effects may include distrust of others, depression, disturbed interpersonal relationships, self-destructive behaviors (e.g., alcohol and drug abuse) and the perpetuation of abuse within or outside the victim's own family.

While we must focus on the causes of child abuse to curb and prevent this problem, our experience with recent cases has shown us that we must also be able to work effectively with the child victim once he or she enters the legal system. We must be especially mindful of the potential for a second victimization of the child in the process of seeking justice for the first.

Children's Competence to Testify in Court

The basic test for a child's competence to testify in court is whether the child has sufficient intelligence and ability to give reliable and relevant testimony that could be of assistance to the court. Many state statutes presume children below a certain age (e.g., 10 or 12) incompetent to testify. This reflects the belief that young children, particularly pre-school children, are not reliable reporters of events or able to distinguish truth from falsehood or fantasy from reality. However, research and professional practice demonstrate that this presumption is not warranted. This position has been asserted before this Subcommittee by Dr. Gary Melton and Dr. Donald Bersoff, psychologists with expertise in the legal field. Moreover, the 1984 report of the Attorney General's Task Force on Family Violence recommended that judges adopt a presumption that children are competent to testify, regardless of their age. The Task Force further directs that: "A child's testimony should be allowed into evidence with credibility being determined by the jury. The jury shall be carefully instructed not to hold the child to adult standards of credibility, but to consider the testimony in light of the child's age, maturity, and level of development" (p. 39).

The question of a given child's competence to testify focuses on four major abilities: 1) moral development; 2) memory skills; 3) cognitive development; and 4) suggestibility. Let me provide some of the findings of psychological research related to these specific concerns.

First, with respect to moral development, the key issue for the judicial system is whether children can distinguish truth from falsehood when giving testimony. In this regard, researchers have found no significant correlation between honesty and age. Further, in recent testimony presented before this Subcommittee by Joyce Thomas and her colleagues at the Child Protection Division of Children's Hospital National Medical Center in D.C., it was reported that only 2.7% of the children they came in contact with fabricated allegation of sexual abuse or molestation. This figure is representative of those reported elsewhere.

Second, with regard to memory skills, it is generally believed that children have difficulty remembering the details of events. However, very young children may have recall ability superior to that of adults for some details of events. Because children do not focus their attention in the systematic manner that adults do, they may notice and remember details that adults ignore. Research has shown that young children are able to give eyewitness testimony comparable to that of adults. For instance, one study demonstrated that one-fourth of a group of fourth-graders and three-fourths of first-graders were able to recall a distracting incident in a videotaped presentation as compared to none of the adults.

These and similar findings can be construed as providing support for the use of young children as witnesses in court. The findings are also consistent with earlier laboratory studies suggesting that children as young as 4 or 5 can recognize pieces of information as well as adults. Children account spontaneously fewer details of events, particularly if the event in question is generally unfamiliar to the child but this can be overcome to meet the demands of testimony with simple, direct and supportive questions.

Third, young children may not have reached the stage of cognitive development where they can recall events in time and space without distortion. But they are fairly accurate in recalling certain details of events. Children are, however, more likely to be influenced on the peripheral rather than the central aspects of an event, a factor which should be considered when questioning children. While their level of cognitive development may preclude their understanding of abstract concepts and questions, young children are very capable of responding to concrete questions. Furthermore, as long as suggestive questioning can be ruled out, a child's report may be quite accurate, even if the child cannot remember peripheral details.

Fourth, the issue of suggestibility poses the most concern to the court system when considering the testimony of child victims. While children may be influenced by leading questions, the view that their memory is extremely malleable has not been supported by research. Children as well as adults, tend to be more suggestible under stressful conditions, however, and do make errors in recall. Also children tend to be more suggestible when their memories are weak or the questioner is of high status. These facts point to the importance of children giving testimony under supportive conditions and argue for alternatives to courtroom settings and procedures.

In summary, available psychological research suggests that children as young as age 4 can present testimony as reliable as that of adults. While children may not spontaneously recount as many details about an event as adults, their memory can be stimulated with direct and concrete questions that are appropriate for their level of cognitive development. Children are also no more likely than adults to fabricate incorrect responses, either intentionally or unintentionally. It should be noted that these findings are based primarily on laboratory studies in which the level of stress and personal involvement is much less than in cases of child abuse. We desperately need more research to examine children's understanding of the legal system, the short- and long-term effects of legal involvement on children and the development of interventions to facilitate children's participation in legal proceedings. Research in this area will soon be conducted by the Office of Juvenile Justice and Delinquency Prevention (OJJDP) and the DHHS National Center on Child Abuse and Neglect.

Needed Legal Reforms to Aid Child Victims

The Attorney General's Task Force on Family Violence recommends that the legal system adopt special rules and procedures for child victims. In addition to a presumption of children's competence to testify, the final report suggests the following reforms: 1) use of hearsay evidence at preliminary hearings; 2) appointment of a special volunteer advocate for children when appropriate; 3) allowing the child's trial testimony to be presented on videotape with agreement of counsel; and 4) flexible courtroom settings and procedures (pp. 37-38). The report also recommends that communities "develop a multi-disciplinary team to investigate, process and treat all incidents of family violence, especially cases of physical and sexual abuse" (p. 10). These and other much needed reforms are included in S.1156.

The other reforms suggested for state adoption in S.1156 to reduce potential trauma to the child victim include coordination of civil and criminal court proceedings, court authority to enter protective orders and special training for those involved with child abuse victims. It is essential that law enforcement and judicial personnel receive training in child development and the dynamics of intrafamilial and extrafamilial child abuse. Likewise, child welfare and mental health personnel must learn more about the legal issues involved in these cases. All these professionals would benefit greatly from training in both child development and family law; insufficient attention is generally directed to these areas at both the undergraduate and graduate levels.

The role of the support person must not be underestimated. Although parents can generally be assumed to act in their child's best interest, in times of family stress or breakdown, it is essential that an unbiased and knowledgeable individual be appointed to represent the child.

Other reforms designed to improve the chances of successful criminal prosecution or legal action in child abuse cases can also be expected to reduce the potential for further traumatization of the child victim. These reforms include the use of videotaping and closed-circuit television which provide alternatives to the actual courtroom participation of the child victim which would necessitate face-to-face interaction with the alleged offender. Other suggested reforms would facilitate the child's participation by allowing the use of leading questions and anatomically correct dolls which are often essential to enable children to communicate at their own level. Although some experts conjecture that direct confrontation with the accused could have a cathartic effect in certain cases by returning to the child victim a sense of control over his or her life, the majority of experts believe that this highly charged experience can be very traumatic to the child victim and could lead to longterm psychological problems. Prior to the widespread implementation of any one of these reforms, they should be evaluated in terms of their constitutionality and psychological effects.

A thorough review of the many positive reforms proposed in S.1156 to aid child abuse victims should not neglect some mention of the creative mechanism set forth in the bill to provide Federal assistance to implement these state initiatives. Rather than levying an additional tax upon the overburdened taxpayer, S.1156 taps additional monies in the "Crime Victims Fund" administered by the Treasury Department under the authority of the Victims of Crime Act of 1984. This fund consists of fines collected from persons convicted under Federal laws.

Thank you for the opportunity to testify on behalf of the American Psychological Association on S.1156, the "Child Victim Witness Protection Act of 1985." Not only does this bill reflect psychological knowledge regarding the competence of children to testify in court, but it also provides a novel approach to reducing the potential trauma which might arise from children's courtroom participation and strives to further the chances of successful legal action in these cases. If the American Psychological Association can be of any further assistance to the Subcommittee, please do not hesitate to call upon us.

RESPONSES OF DR. ELLEN F. GREENBERG TO WRITTEN QUESTIONS FROM SENATOR DENTON

CHILD WITNESS' ABILITY TO RECALL DETAIL

Question. According to a November 6, 1984 *New York Times* article entitled "Studies of Children as Witnesses Find Surprising Accuracy," children may, in fact, have recall ability superior to that of adults for some detail of events. The article noted that, "Because young children do not organize their attention as systematically as do adults, they may notice and remember what adults ignore."

Dr. Greenberg, could you comment on this conclusion?

Answer. Psychological research supports the aforementioned conclusion that children may recall certain details of events better than adults. In this regard, studies conducted in laboratory settings have demonstrated that a significant percentage of young children were able to recall a distracting incident in a videotaped presentation as compared to none of the adults. The generality of these findings to real-life incidents involving eyewitness testimony is readily apparent. For instance, a child may be able to recall details of an abusive incident such as a facial scar which may aid in identifying an offender, or a clock which would help estalbish the time of the offense. This type of information, which might be overlooked by an adult, could be incredibly valuable in the prosecution of child abuse cases.

While children may not spontaneously recount as many details about an event as adults, particularly if the even in question is unfamiliar to them, their memory can be stimulated with direct and concrete questions that are appropriate for their level of cognitive development. In summary, available psychological research suggests that even children as young as four years of age can present testimony as reliable as that of adults.

CREDIBILITY AND COMPETENCY OF THE CHILD VICTIM

Question. Dr. Greenberg, all too often a child's credibility or competency to testify is questioned due to a failure to understand adequately that child's account within the context of normal developmental expectation: the child's complaint, and particularly the child's behavior are seen as unlikely to be true because the individual assessing credibility is applying adult standards and adult reasoning to the situation.

Can a jury of adults be made to understand the child's allegation within the context of that child's developmental level?

Answer. Yes, psychological research has shown that if children are asked direct and concrete questions with words that they understand they can in fact give reliable and relevant testimony that could be of assistance to the court. Regardless of their age, children should be presumed to be competent to testify in court. Yet certain procedures, such as those provided in S. 1156, which take into account the cognitive developmental level of children should be instituted to facilitate the courtroom participation of child abuse victims.

According to the 1984 *Final Report of the Attorney General's Task Force on Family Violence,* "A child's testimony should be allowed into evidence with credibility being determined by the jury. The jury should be carefully instructed not to hold the child to adult standards of credibility, but to consider the testimony in light of the child's age, maturity, and level of development." Unlike adults, young children cannot comprehend abstract ideas or concepts. Even though a child may have no understanding of sexual acts, for instance, he or she may still be able to describe crucial details of a sexually abusive incident, with the use of sensitive questioning, drawings, and/or anatomically correct dolls.

Therefore at least a minimal amount of instruction is needed to inform jurors of the developmental limitations of certain child witnesses and the advisability of certain alternative courtoom procedures prior to hearing their testimony. Other personnel in the judicial system must not be overlooked with regard to this issue. Judges lawyers, law enforcement, mental health and child welfare personnel, and others involved in the prosecution of child abuse cases must receive training in child development and the specific dynamics of child abuse (as provided for in S. 1156) and must be made aware of the developmental level of a given child witness.

The establishment of interdisciplinary teams of child abuse professionals (as recommended in S. 1156) would also enhance the child's courtoom participation by balancing the investigatory needs of the court with the mental health needs of the child victim. These teams of professionals could provide assistance to the court to aid in overcoming the common tendency of jurors to evaluate children's testimony by inappropriate adult standards.

REMOVAL OF A CHILD VICTIM FROM THE HOME

Question. Dr. Greenberg, once sexual abuse is disclosed, action should be taken to protect the child, to disrupt the ongoing flow of events so as to help insure that reabuse will not take place while the perpetrator is getting help to control his behavior. The action usually takes the form of removing the child from the home. However, such removal disrupts the child's life, deprives that child of the emotional support he or she needs most at the stressful time of disclosure of the abuse, and can communicate to the child that he or she is responsible for the sexual abuse.

How can we best protect the victim from further abuse without damaging that child psychologically?

Answer. In deciding upon an appropriate administrative or judicial response in intrafamilial child sexual abuse cases, it is critical to safeguard the physical and psychological welfare of the child victim. Since removal from the home can inflict severe psychological harm on a child sexual abuse victim, this alternative should only be used as a last resort. If at all possible, the child should not be distanced from his or her family which is often the child's only source of emotional support and stability. Even in cases of extreme abuse, children have displayed very strong emotional ties to their abusive parent(s). Moreover, children should not be subject to any action which might given them the impression that they are at fault.

If there is sufficient evidence to indicate thaat the abuse will recur, then the offending family member, not the child, should be removed from the home. Any contacts between the offender and the child should be supervised by a child protective service worker or other individual designated by the court. In certain instances, it may be necessary to obtain a civil protection order from the court to prohibit the offender from making any contact, personal or otherwise, with the victim. Granting authority to the courts to enter such orders is recommended for the States in S. 1156.

The Attorney General's Task Force on Family Violence goes even further in making the following recommendation: "In granting bail or releasing the assailant on his own recognizance, the judge should impose conditions that restrict the defendant's access to the victim and strictly enforce the order." If implemented, this provision would preclude the necessity of obtaining a protection order and would preserve the defendant's right to release while providing for the safety of the child victim.

The development of community programs to educate families about proper child care and ways to cope with stress are also critical. More direct family support services such as in-home services, crisis nurseries, respite day-care centers and drop-in crisis centers are also desperately needed. Psychological counseling should also be provided for both the child and the family; the best interests of the child should guide the therapy. Placement decisions concerning child sexual abuse victims must be made on a case-by-case basis. The child's progress should be monitored closely by mental health personnel to ensure that the placement promotes the child's physical and psychological well being. After-care services for the family are also essential to prevent future abuse.

SUPPORT PERSON FOR THE CHILD VICTIM

Question. Dr. Greenberg, one of the suggested procedures in S. 1156 which would minimize additional trauma to the child victim would include providing for a support person to the child victim prior to and during the course of any legal or administrative proceeding to protect the interests of that child. In the past, it was believed that the attorneys representing the agency or the parents, as well as the judge, could adequately represent the child's interests.

My question is this: in a case of intrafamily abuse, do you believe the non-offending parents can, from a psychological standpoint, adequately represent the interest of the child victim?

Answer. No. Intrafamilial abuse by definition is extremely divisive for families. In cases of family discord or breakdown, we can no longer presume that parents act in the best interests of their children. The non-offending parent is often overwhelmed by the child's accusation of incest. Whether out of feelings of love for the spouse or fear of financial insecurity and marital breakdown, the non-offending parent may accuse the child of fabricating the incident or seducing the other parent. While this response enables the non-offending parent to deny the complicity of the spouse, it has the concomitant effect of making the child feel angry, guilty, helpless and isolated—the family pariah. In these circumstances, the non-offending parent might favor the removal of the child from the home rather than the spouse. The non-offending parent may also feel tormented by feelings of sexual inadequacy and parental and marital failure.

This emotional turmoil and divided loyalty between spouse and child argue against the ability of the non-offending parent to represent adequately the best interests of the child. In instances of intrafamilial abuse, it is therefore essential that a support person be provided to the child victim prior to and during the course of any legal or administrative proceeding to protect the interests of the child, as recommended in S. 1156.

RESPONSES OF DR. ELLEN F. GREENBERG TO WRITTEN QUESTIONS FROM SENATOR SPECTER

Question 1. Based on your experience, what is the potential for psychological trauma to children resulting from their involvement in the prosecution of child sexual abuse cases? How, in your opinion, will the provisions in this bill reduce this trauma for the child victim witness?

Answer No. 1. The immediate and long-term effects of child abuse are other highly traumatic and severely impede the normal process of child development. Long-term effects may include distrust of others, depression, disturbed interpersonal relationships, self-destructive behavior (e.g., alcohol and drug abuse) and the perpetuation of abuse within or outside the victim's family. It is generally believed by psychologists and other health care professionals who work with child abuse victims that the involvement of children in the prosecution of child sexual abuse cases has the potential to exacerbate these problems and culminate in a second victimization of the child.

The judicial process can be quite frightening for young children (and adults, for the matter). Child victims are repeatedly questioned by numerous authority figures about incidents they do not fully comprehend; they must undergo a thorough medical examination; they must respond to a judge donned in a long black robe; they must recount the incident again in a courtroom to unfamiliar individuals; they must confront the defendant from the witness stand; and they must withstand cross-examination by the defense attorney. While some professionals believe that the process of testifying may be cathartic for some child abuse victims (by making them feel vindicated and in control of their lives), this is certainly the minority view.

The provisions in S. 1156 are aimed at reducing the potential trauma for children involved in the procecution of child abuse cases. For instance, the establishment of interdisciplinary teams of child abuse professionals would curtail the number of interviews to which child victims must be subjected. The provision of a support person to child victims and training to those professionals involved in child abuse cases would ensure children's exposure to people who are sensitive to their needs and situation. Modification of certain evidentiary procedures so as to permit the use of drawings and anatomically correct dolls in legal proceedings would enable children to communicate at their own level, thereby reducing the anxiety and frustration which would otherwise result. The establishment of procedures such as videotaping and closed-circuit televison which would allow for the removal of child victims from the courtroom setting would clearly serve to reduce further trauma to the child victim. In short, the provisions in S. 1156 would serve to safeguard the welfare of child abuse victims involved in legal proceedings without unduly infringing upon the rights of the accused.

Question No. 2. What is your view regarding the source and level of funding for this legistative initiative?

Answer No. 2. S. 1156 proposes a novel and most appropriate mechanism to fund needed State reforms to aid child abuse victims. Rather than levying an additional tax upon the already overburdened taxpayer, S. 1156 raises the ceiling of the "Crime Victims Fund," which is administered by the Treasury Department under the authority of the Victims of Crime Act of 1984, to allow for the expenditure of up to $10 million for this new program. Not only is there an inherent sense of justice in this approach (as the fund is comprised of fines collected from persons convicted under Federal laws), but the intent of S. 1156 is in keeping with the Victims of Crime Act.

This similarity in intent between S. 1156 and the Victims of Crime Act is particularly true with respect to your amendment to the victim assistance section of the Act which requires State administrators to certify that priority is given to aiding victims of child abuse, spousal abuse and sexual assault. It should be noted that enactment of S. 1156 would not duplicate these functions, since the bill focuses on the development and establishment of State level reforms rather than the provision of assistance to individual crime victims. S. 1156 would ensure that beneficial procedures are adopted by the State to reduce trauma for all child abuse victims and to further the chances of successful legal action against offenders.

The proposed authorization of $10 million for implementation of S. 1156 is acceptable. It is unfortunate, however, that current budget constraints preclude a direct appropriation for this program apart from the accumulated monies in the Crime Victims Fund. To guard against possible recissions in the $10 million currently authorized for the Crime Victims Fund, the Senate might stipulate that up to 10 percent of the authorized Fund level may be added to the ceiling of the Fund to carry out the purposes of S. 1156.

Question No. 3. How do you view this legislation in light of the Senate's passage of S. 140, the "Children's Justice Act?" Do you believe these bills are complementary regarding approach, goals, and funding sources?

Answer No. 3. While the Children's Justice Act (S. 140) and the Child Victim Witness Protection Act (S. 1156) share similar goals, the approach and funding sources differ significantly. The primary purpose of both pieces of legislation is to encourage States to establish programs and procedures to minimize additional trauma to child abuse victims and to improve the chances of successful criminal prosecution or legal action. Among its stated purposes, S. 140 also includes the improvement of procedures to protect children from abuse; the only procedure suggested under this category which is not included in S. 1156 involves the development of treatment programs for the offender and the abused child.

With respect to approach, S. 140 provides more direction to the States to carry out the purposes of the Act. A key provision requires the States to establish a multidisciplinary task force on children's justice and to adopt the reforms suggested by the task force in order to qualify for Federal assistance. S. 1156, on the other hand, does not mandate the establishment of such a task force, thereby granting more flexibility to the States to determine and enact needed reforms to aid child abuse victims. Yet the recommended reforms designated in the two bills are nearly identical.

The striking difference between the two bills is in terms of funding source. In contrast to the Victims of Crime Act funding source noted above for S. 1156, S. 140 authorizes an additional $12 million for the Child Abuse Prevention and Treatment Act of 1974. This latter approach poses some major problems. For one, this Act is associated with intense conflict as its scheduled 1983 reauthorization was delayed one year due to heated controversy over the "Baby Doe" and family violence amendments. There is also some concern about the appropriateness of the Department of Health and Human Services implementing an act which primarily involves legal reforms. Moreover, as currently constructed, the Act would in effect allow States to receive Federal funds for S. 140 without meeting the program requirements of the Child Abuse Prevention and Treatment Act; this could be seriously detrimental to existing State child protective service systems.

In summary, while I wholeheartedly support the shared goals of S. 1156 and S. 140, I strongly favor the more viable funding mechanism offered by S. 1156. If the two bills were to be considered jointly by the Congress, I would urge adoption of the multidisciplinary task force provided in S. 140 and several of the other provisions such as the reporting requirements and the modification of the FBI Offense Classification System.

Mr. HOLCOMB. The next witness is Mr. David S. Liederman, who is the executive director of the Child Welfare League of America. I would ask him to come forward. Your complete statement will be placed in the record and we would ask that you summarize your testimony.

STATEMENT OF DAVID S. LIEDERMAN, EXECUTIVE DIRECTOR, CHILD WELFARE LEAGUE OF AMERICA, INC.

Mr. LIEDERMAN. Thank you. I am David Liederman, executive director of the Child Welfare League. The Child Welfare League is a national organization representing 360 member agencies in the United States. Among our members are the Children's Aid Society of Birmingham, AL, and the Kentucky Department of Social Services.

We have both public and private agencies, sectarian and nonsectarian members. I do not think there is any question about the need for S. 1156, and we really commend you, Rick, for helping to move this legislation along, and certainly, Senator Denton and Senator McConnell for their leadership on this issue.

As Ellen pointed out, there are over a million physically abused children in the United States. Five thousand of them are going to die from that physical abuse this year.

About 1 year ago, Massachusetts passed legislation requiring that the Department of Social Services, in every instance of severe physical abuse, to report the case to the appropriate district attorney's office. They have been keeping rather accurate statistics and have found that 91 percent of the cases of physical abuse were related to sexual abuse. A rather staggering figure for the folks in the Department, and for the folks in Massachusetts who are trying to work with the children and families affected.

We have been conducting a study around the country of the State departments of social services which are members of the league, and find that in almost every State, child abuse is up. In Pennsylvania, reported cases of abuse and neglect are up 26 percent from 1983 to 1984.

So there is no question that there is a serious problem that needs to be addressed. There is also no question that a courtroom is a very intimidating place for a child.

It is not uncommon, even for adults, when cross-examined, to become part of the "blaming the victim" phenomena. We see that in rape cases all the time. A women enters court as the victim, and ends up feeling like the accused, rather than the accuser.

Our concern is that something can happen to children very easily, where the child who is the victim ends up feeling at fault.

Clearly, there needs to be legislation which can protect children who have been victimized, so that the process doesn't victimize them twice, three, or four times, as we have seen in some highly publicized cases around the country.

For a child, the courtroon is really the "land of the giants." You place a small child into a basically adult situation. Sometimes the child is 4 or 5 years old, and the courtroom is extremely intimidating.

We think it is possible to both protect the rights of the accused and to provide safeguards for the child victim witnesses.

We think S. 1156 moves in the right direction. It would establish interdisciplinary teams of child abuse professionals to handle various aspects of the case, to minimize trauma. We think that is good.

It would provide for a support person to assist the child victim prior to and during the course of any legal or administrative proceeding. We think that is good.

It would permit leading questions to be appropriately asked of the child victim. We think that is important.

It would also permit the use of anatomically correct dolls, or drawings, to assist the child victim in bringing forth the testimony and getting at the truth.

More importantly it provides for special units, and training for law enforcement people, judicial people, legal people, child welfare people, the whole range of those involved in the process. We believe that is very important.

In effect S. 1156 begins to do something many of us have been saying across the country: To reconstruct the way we handle child victims in our courtroom.

We cannot treat children the same as adults. We cannot apply to children the same rules of law that apply to adults. We support the committee efforts to move the process in a different direction. One that would allow for the child's right to be protected as will as the rights of the accused.

We also support placing the jurisdiction for this whole process in the Justice Department. If we are going to get the attention of judges and law enforcement people, plus utilize the crime victims fund, you have to place jurisdiction in the Justice Department.

We also believe the Justice Department should be providing leadership in this area and S. 1156 would encourage them to do that. I think it would be a sham to pass this legislation and then not provide for some funding to help the States implement the provisions of the act.

So, in summary, we support the provisions of S. 1516 and think it is a step in the right direction. We thank you for the opportunity to testify.

[Prepared statement and responses to written questions follow:]

Prepared Statement of David S. Liederman

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE -- MY NAME IS DAVID LIEDERMAN AND I AM THE EXECUTIVE DIRECTOR OF THE CHILD WELFARE LEAGUE OF AMERICA. ON BEHALF OF THE LEAGUE, I AM PLEASED TO BE ABLE TO BE HERE THIS MORNING TO PRESENT OUR VIEWS REGARDING S. 1156, THE "CHILD WITNESS PROTECTION ACT OF 1985".

THE CHILD WELFARE LEAGUE OF AMERICA IS THE ONLY PRIVATELY SUPPORTED ORGANIZATION IN NORTH AMERICA SOLELY DEVOTED TO IMPROVING SERVICES FOR DEPRIVED, NEGLECTED AND ABUSED CHILDREN. WE ARE A NATIONAL ASSOCIATION OF MORE THAN 350 LEADING CHILD WELFARE AGENCIES IN THE UNITED STATES AND CANADA, WITH AN ADDITIONAL 1200 AFFILIATES IN 27 STATE ASSOCIATIONS. AMONG OUR MEMBERSHIP, FOR EXAMPLE ARE THE JEWISH FAMILY AND CHILDREN'S AGENCY OF PHILADELPHIA, THE CHILDREN'S AID SOCIETY OF BIRMINGHAM, AND THE CHILDREN'S HOME AND AID SOCIETY OF ILLINOIS.

THE CHILD WELFARE LEAGUE OF AMERICA IS PLEASED TO APPEAR THIS MORNING TO DISCUSS S. 1156. I WILL BRIEFLY OUTLINE OUR POSITION ON THIS IMPORTANT BILL WITH EMPHASIS IN THREE AREAS: 1) ITS IMPACT ON CHILDREN; 2) ITS PROTECTION OF EXISTING FUNDING SOURCES FOR THE DIRECT TREATMENT AND PREVENTION OF CHILD ABUSE; AND 3) ITS, WE BELIEVE, CORRECT PLACEMENT OF ADMINISTRATIVE AUTHORITY WITHIN THE DEPARTMENT OF JUSTICE. I WILL BE BRIEF IN MY DISCUSSION TO ALLOW TIME FOR QUESTIONS. IF, HOWEVER, I HAD TO SUM UP THE POSITION OF THE CHILD WELFARE LEAGUE OF AMERICA IN ONE SENTENCE, IT WOULD BE THIS: CHILD ABUSE VICTIM WITNESS LEGISLATION IS NEEDED AND S. 1156 IS AN EXCELLENT PIECE OF LEGISLATION TO ADDRESS THAT NEED.

S. 1156 IS GOOD FOR CHILDREN

I SUSPECT THERE IS LITTLE NEED TO DISCUSS THE PROBLEM OF CHILD ABUSE ITSELF. I AM RELATIVELY SURE WE ALL AGREE THAT IT IS A PROBLEM -- IN FACT, A TRAGEDY -- A TRAGEDY FOR THE AMERICAN FAMILY, OUR SOCIETY'S MOST IMPORTANT INSTITUTION. FROM RESEARCH PRESENTED AT THE NATIONAL CONFERENCE ON CHILD

ABUSE AND NEGLECT IN CHICAGO LAST WEEK, WE KNOW THAT AT LEAST A MILLION CHILDREN ARE PHYSICALLY ABUSED EACH YEAR. AS MANY AS 5,000 OF THESE WILL DIE AS A DIRECT RESULT. WHEN WE INCLUDE CHILDREN WHO ARE SEXUALLY ABUSED AND THOSE WHO ARE NEGLECTED, ESTIMATES RUN AS HIGH AS THREE MILLION.

LET ME ASSURE YOU, BY THE WAY, THAT IRREGARDLESS OF WHAT YOU MAY HAVE HEARD ON THE TELEVISION NEWS LAST WEEK, THIS TRAGEDY IS A GROWING TRAGEDY. WHEN WE LOOK AT REAL STATISTICS FROM CASES WHICH INVOLVE THE LEGAL SYSTEM, WE FIND A 123 PERCENT INCREASE BETWEEN 1976 AND 1982 (TRENDS IN CHILD ABUSE AND NEGLECT: A NATIONAL PERSPECTIVE, THE AMERICAN HUMANE ASSOCIATION, 1984). CWLA IS COMPLETING A SURVEY OF CHILD PROTECTION AGENCIES ACROSS THE UNITED STATES. THE RESULTS ARE NOT YET COMPLETE BUT, FROM PRELIMINARY ANALYSIS, OF THE FORTY-ONE STATES WHICH HAVE THUS FAR RESPONDED, ONLY ONE (NORTH CAROLINA) HAS REPORTED A DECREASE DURING THE PAST TWO YEARS. IN ILLINOIS REPORTS ARE UP 8%; IN PENNSYLVANIA, 26%. THESE ARE THE CASES THAT, BECAUSE THEIR SERIOUSNESS, MUST INVOLVE OUR LEGAL SYSTEM. THESE ARE THE CASES UPON WHICH WE WISH TO FOCUS THIS MORINING.

THE AMERICAN COURTROOM CAN BE A INTIMIDATING PLACE -- EVEN FOR ADULTS. FOR YEARS ADULT WOMEN VICTIMIZED BY RAPE HAVE FOUND THE COURT PROCESS TO BE ALMOST AS TRAUMATIZING AS THE OFFENSE ITSELF -- SO MUCH SO THAT, DESPITE THE SERIOUSNESS OF THE CRIME, MANY DECLINE TO FOLLOW THOUGH WITH PROSECUTION. THE COURT PROCEDURES ARE DIFFICULT TO UNDERSTAND; UNDER CROSS-EXAMINATION IT MAY BE THE VICTIM'S MORALS AND VALUES, RATHER THAN THOSE OF THE ACCUSED, WHICH ARE PUBLICALLY QUESTIONED.

IS IT ANY WONDER THAT CHILDREN ARE TRAUMATIZED BY LEGAL PROCEEDINGS? WE OFTEN FORGET THAT THEY LIVE IN A "LAND-OF-GIANTS" IN THE FIRST PLACE. THE ADULT WORLD CAN BE FRIGHTENING AND CONFUSING TO CHILDREN EVEN WHEN THINGS ARE AT THEIR BEST. WE EXPECT TOO MUCH WHEN WE LEAD THEM INTO A COURTROOM FULL OF "GIANTS" AND EXPECT THEM TO UNDERSTAND THE LANGUAGE AND PROCEDURES OF TRIAL WHICH ARE OFTEN DIFFICULT FOR ADULTS TO COMPREHEND. WE EXPECT TOO MUCH WHEN WE EXPECT THEM TO HOLD UP EMOTIONALLY UNDER CROSS-EXAMINATION BY A PROFESSIONAL "GIANT" SKILLED IN DISORIENTING EVEN EXPERT WITNESSES. PERHAPS

MOST OF ALL WE EXPECT TOO MUCH WHEN WE LEAD CHILDREN INTO THE COURTROOM, WITHOUT ASSISTANCE, TO CONFRONT THE VERY "GIANT" WHO ABUSED THEM -- PARTICULARLY WHEN THAT "GIANT" IS USUALLY THE ONE KNOWN BEST TO THEM -- A PARENT. WE EXPECT TOO MUCH WHEN WE EXPOSE THESE CHILD VICTIMS TO THIS PROCESS AND THEN EXPECT THEM TO FUNCTION EMOTIONALLY AFTERWARDS AS IF NOTHING HAD HAPPENED. CURRENT PROCEDURES ARE, INDEED, AS STATED IN S. 1156, OFTEN TANTAMOUNT TO A SECOND VICTIMIZATION.

OUR LEGAL SYSTEM, OF COURSE, MUST ALWAYS CONTINUE TO PROTECT THE RIGHTS OF THE ACCUSED; BUT IT IS POSSIBLE TO BOTH PROTECT THE CIVIL RIGHTS OF THE ACCUSED AND TO PROVIDE FOR THE EMOTIONAL SECURITY OF THE CHILD VICTIM WITNESS. S. 1156 REPRESENTS AN IMPORTANT STEP IN THAT DIRECTION. OF PARTICULAR NOTE ARE PROPOSED PROCEDURES: (1) FOR ESTABLISHING INTERDISCIPLINARY TEAMS OF CHILD ABUSE PROFESSIONALS FOR HANDLING CHILD ABUSE CASES; (2) FOR PROVIDING A SUPPORT PERSON TO THE CHILD VICTIM PRIOR TO AND DURING THE COURSE OF ANY LEGAL OR ADMINISTRATIVE PROCEEDING; (3) FOR PROVIDING SPECIAL UNITS AND TRAINING RELATING TO CHILD DEVELOPMENT, CHILD WELFARE AND OTHER LAW ENFORCEMENT AND JUDICIAL PROFESSIONALS TO DEAL WITH THE CHILD VICTIM; AND, (4) FOR GRANTING COURTS THE AUTHORITY TO ENTER PROTECTIVE ORDERS TO PROTECT THE CHILD VICTIM FROM ADDITIONAL ABUSE. CWLA ALSO APPRECIATES THE ENCOURAGEMENT FOUND IN S. 1156 FOR REFORMS IN THE AREA OF COURTROOM PROCEDURES -- FOR EXAMPLE, PROPOSALS TO PERMIT LEADING QUESTIONS TO BE ASKED OF THE CHILD; TO PERMIT THE USE OF ANATOMICALLY CORRECT DOLLS AND DRAWINGS TO DESCRIBE THE ABUSE; AND TO ESTABLISH A PRESUMPTION THAT CHILDREN ARE COMPETENT TO TESTIFY. INCIDENTIALLY, WITH REGARD TO THE LAST ITEM, RECENT RESEARCH (DAVID P. JONES, CLINCIAL DIRECTOR, C. HENRY KIRNSE NATIONAL CENTER, DENVER, COLORADO, 1985) DEMONSTRATED THAT IN CASES OF CHILD SEXUAL ABUSE, CHILDREN WERE LESS LIKELY THAN ADULTS TO MAKE FALSE REPORTS.

THERE IS A NEED TO IMPROVE THIS NATION'S COURTROOM PROCEDURES WITH REGARD TO CHILDREN IN CHILD ABUSE CASES AND IMPROVEMENT IS POSSIBLE. A PROGRAM IN MADISON COUNTY, ALABAMA, WHICH I KNOW IS FAMILAR TO SENATOR DENTON, PROVIDES A MODEL WHICH IS WORKING. THE CHILD WELFARE LEAGUE OF AMERICA BELIEVES THAT S. 1156 CAN PROVIDE A CATALYST FOR POSITIVE REFORM AND IS DEFINITELY IN THE BEST INTEREST OF CHILDREN.

S. 1156 PROTECTS EXISTING CHILD ABUSE TREATMENT AND PREVENTION FUNDING

THE NEED FOR A BILL SUCH AS S. 1156 IS EVIDENCED BY THE FACT THAT SEVERAL OTHER SIMILAR BILLS HAVE BEEN INTRODUCED THIS SESSION. ONE, S. 140, PASSED THE SENATE IN AUGUST. HOWEVER, AS AMENDED ON THE SENATE FLOOR, S. 140 AUTHORIZES THE APPROPRIATION OF $12 MILLION UNDER THE CHILD ABUSE PREVENTION AND TREATMENT ACT. DURING THESE TIMES OF FEDERAL FISCAL RESTRAINT, WHEN AN ADDITIONAL APPROPRIATION FOR A NEW INITIATIVE IS INCREASINGLY UNLIKELY, IT WOULD BE DETRIMENTAL TO TAKE EXISTING FUNDS, CURRENTLY USED FOR DIRECT SERVICES, TO FINANCE COURT REFORM. EITHER WAY, IT IS ABUSED CHILDREN WHO PAY. A $12 MILLION DECREASE IN THE APPROPRIATION OF EXISTING CHILD ABUSE FUNDS WOULD REPRESENT AN EFFECTIVE REDUCTION OF ROUGHLY 50 PERCENT. WITH REPORTS OF CHILD ABUSE GROWING, A REDUCTION OF EVEN 5 PERCENT IS UNACCEPTABLE. IF THE CHILD WELFARE LEAGUE WERE FORCED TO CHOOSE BETWEEN A CHILD VICTIM PROTECTION PROGRAM WHICH CIPHONED OFF EXISTING CHILD ABUSE RESOURCES AND NO PORGRAM AT ALL, WE WOULD RELUCTANTLY BE FORCED TO CHOOSE NO PROGRAM AT ALL.

THE CHILD WELFARE LEAGUE BELIEVES THAT S. 1156 PROVIDES AN EXCELLENT FUNDING ALTERNATIVE WHEN COMPARED TO OTHER CHILD VICTIM WITNESS PROPOSALS. BY AUTHORIZING THE ATTORNEY GENERAL TO UTILIZE THE EXISTING CRIME VICTIMS FUND UNDER CHAPTER XIV OF THE COMPREHENSIVE CRIME CONTROL ACT OF 1984 AND BY RAISING THE FUND'S CEILING BY $10 MILLION, S. 1156 PROVIDES THE FUNDS FOR NEEDED REFORM WITHOUT THREATENING EXISTING RESOURCES FOR CHILD ABUSE TREATMENT AND PREVENTION.

S. 1156 PLACES FEDERAL ADMINISTRATIVE AUTHORITY WITHIN THE FEDERAL AGENCY MOST LIKELY TO PRODUCE EFFECTIVE RESULTS

ANOTHER SUPERIOR FEATURE OF S. 1156 IS THAT ADMINISTRATIVE CONTROL WOULD BE PLACED WITHIN THE JUSTICE DEPARTMENT RATHER THAN THE DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS). NOT ONLY DOES THIS PROTECT EXISTING FUNDING BUT IT ALSO MAXIMIZES THE POSSIBLITIES FOR SUCCESS. CWLA'S POSITION ON THIS

PROVISION SHOULD IN NO WAY BE CONSTRUED TO REFLECT NEGATIVELY ON THE ADMINISTRATIVE CAPABILITY OF HHS. VERY SIMPLY, OUR EFFORTS IN CHILD VICTIM WITNESS REFORM MUST FOCUS ON COURT REFORM AND THE JUSTICE DEPARTMENT IS LIKELY TO HAVE MORE INFLUENCE IN THAT AREA.

A PROGRAM OF WHICH I KNOW THIS SUBCOMMITTEE IS WELL AWARE IS THE OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION (OJJDP). WHEN OJJDP WAS BEING CREATED IN 1974, THE SENATE SPONSORS BROKE WITH TRADITION AND PLACED IT WITHIN THE JUSTICE DEPARTMENT. THE HOUSE READILY CONCURRED IN THE HOUSE-SENATE CONFERENCE. THE LOGIC BEHIND THAT MOVE WAS THAT SINCE THE JUVENILE COURT AND LAW ENFORCEMENT SYSTEMS WERE TO BE IMPACTED, THE JUSTICE DEPARTMENT'S INVOLVEMENT WOULD ELICIT MORE ATTENTION AND RESPECT. AFTER A DECADE OF PERFORMANCE, THE JUVENILE JUSTICE ACT HAS VERIFIED THAT LOGIC. CWLA BELIEVES THE SAME LOGIC APPLIES TO CONSIDERATION OF CHILD VICTIM WITNESS PROTECTION. ATTORNEY'S, JUDGES, COURT PERSONNEL, AND LAW ENFORCEMENT OFFICIALS, AS WELL AS CHILD WELFARE PROFESSIONALS, WILL ALL NEED TO BE INVOLVED. CWLA BELIEVES THAT THE JUSTICE DEPARTMENT IS IN A BETTER POSITION TO EXERT NEEDED LEADERSHIP.

CONCLUSION

MR. CHAIRMAN, THAT BRINGS MY FORMAL TESTIMONY TO A CLOSE. IN SUM, THE CHILD WELFARE LEAGUE OF AMERICA SUPPORTS S. 1156 AND URGES ITS FAVORABLE CONSIDERATION BY THIS COMMITTEE, THE SENATE, AND THE CONGRESS. WE COMMEND SENATOR DENTON'S AUTHORSHIP AND THIS SUBCOMMITTEE'S DELIBERATION.

Responses of David S. Liederman to Written Questions from Senator Denton

CRIMINAL JUSTICE SYSTEM

Question. Mr. Liederman, Federal monies are currently going to the States to fund child abuse prevention, treatment and compensation programs. However, there appears to be monies or emphasis relating to improving the criminal justice system as it relates to child abuse victims.

Are you aware of any programs administered by the Department of Justice, Health and Human Services, or another department or agency which provides emphasis on the child victim as a witness?

Answer. No Mr. Chairman I am not. The Office of Juvenile Justice and Delinquency Prevention has funded a project with the National District Attorney's Association but as I understand it emphasizes successful prosecutions not protection of the child witness.

DEPARTMENT RESPONSIBILITY FOR ADMINISTERING THE CHILD VICTIM WITNESS PROTECTION ACT

Question. Mr. Liederman, earlier I asked the Justice Department Representative's view on which department should administer the Child Victim Witness Protection Program. Quite correctly, from my viewpoint, and quite expectedly from the Department of Justice's viewpoint, they stated that DOJ has the necessary expertise to administer this program.

Do you agree with this assessment?

Answer. Yes, I do. It will be necessary to have cooperation from the nation's judicial system if this program is to be successful. The Justice Department would be the best suited to gain that cooperation.

HHS' ABILITY TO FUND THIS TYPE OF PROGRAM WITHOUT ENDANGERING EXISTING PREVENTION AND TREATMENT PROGRAMS

Question. If the Department of Health and Human services was to administer this type of program, do they, in light of the current budgetary situation, have sufficient funding to administer a new program without endangering existing child abuse prevention and treatment programs?

Answer. No, we are most concerned that existing monies, which are being used for services to abused children might be siphoned off to fund this program. Child Victim Witness Protection is important, but we cannot afford to fund it at the expense of our children's safety.

Mr. HOLCOMB. Thank you. Senator Denton and Senator Specter, have some questions they wish to submit to you. Senator Denton has asked that I ask you one short question during the course of the testimony.

Mr. LIEDERMAN. Sure.

Mr. HOLCOMB. If the Department of Health and Human Services was selected to administer this type of program, do you believe, in light of the current budgetary situation, that they would have sufficient funds to administer a new program without endangering existing child abuse prevention and treatment programs?

Mr. LIEDERMAN. Well, that is our great concern about putting this in HHS. I believe the appropriation for the National Center for Child Abuse and Neglect, is about $26 million. If you estimate a $10 million appropriation, given the budget crunch, and Gramm-Rudman, and everything else that we are faced with trying to protect children, what could conceivably happen is, Congress will say, "Well, just take it out of the existing money."

So then you are pitting one child who is being abused against other kids who are being abused. We think that would be a mistake, given the present climate. When I was a member of the Massachusetts Legislature and we wanted to get the attention of judges and law enforcement people, we placed jurisdiction in the judicial system because that is the system that they understand.

Mr. HOLCOMB. Again, on behalf of Senator Denton and the subcommittee, I thank you for your testimony.

Mr. LIEDERMAN. Thank you very much.

Mr. HOLCOMB. The final witnesses will consist of a panel of Curtis L. Decker, who is government liaison, National Association of Protection and Advocacy Systems, Inc., and Suellen Galbraith who is the program director of the Alabama Developmental Disabilities Advocacy Program.

If I may, I will read a part of Senator Denton's introduction since he is not here. The Senator would want to note that after the September 3 Birmingham hearing, Mrs. Galbraith pointed out the special need for handicapped children who become child victim witnesses, and the Senator says he expects the panel's testimony will be most enlightening on the subject, and further expects that it will be the genesis of some modifications to S. 1156. Your complete statements will be placed in the record, and we would ask that you take some time just to summarize them.

STATEMENTS OF A PANEL CONSISTING OF CURTIS L. DECKER, GOVERNMENT LIAISON, NATIONAL ASSOCIATION OF PROTECTION AND ADVOCACY SYSTEMS, INC., AND SUELLEN R. GALBRAITH, PROGRAM DIRECTOR, THE ALABAMA DEVELOPMENTAL DISABILITIES ADVOCACY PROGRAM

Mr. DECKER. Thank you. In the interest of time I will summarize my statement. I am Curtis Decker and I am the government liaison with the National Association of Protection and Advocacy Systems, and I was formerly the director of the Maryland Protection and Advocacy System, and also the director of a statewide child abuse and neglect program for the State of Maryland.

The National Association of Protection and Advocacy Systems is made up of the 56 protection and advocacy systems is each of the States and territories. They were created by the Developmental Disabilities Assistance Act, and are designated by Governors to protect and advocate on behalf of developmentally disabled persons.

In that role, our agencies daily come in contact with persons with developmental disabilities who have been abused and neglected in a variety of settings, including large facilities, but also, their own homes, and by other caretakers.

We would support this legislation and would like the committee to recognize the special vulnerability of children with handicaps, who find themselves in this situation. Certainly, the physical limitations of a handicapping condition can put these children at special risk. The lack of communicative skills, that often these children experience, put them at great vulnerability with their own parents, and certainly, later on, as the legal process evolves.

And lastly, if you look at the dynamic of a child abuse situation, with the high expectations, often unrealistic expectations of parents, also combined with a stressful situation, you can see how handicapped children, often unwittingly, play into that scenario, and that the financial and psychological burden of working and raising a handicapped child can add stress to an already volatile situation. Certainly the inability of those children to often meet those unrealistic expectations of their parents, can lead to excessive abuse.

We believe that this legislation needs to specifically indicate the special vulnerability of the handicapped child, and look at special approaches, in addition to those already listed.

Certainly, the provisions that this bill would encourage States to adopt would apply to the handicapped child, but may have to be extended to the older child, since chronological age often is not a true test for the child with a handicap.

We have also in our experience learned, that in camera proceedings, as well as involving special professions who have had experience with a particular handicapped child who finds himself a victim of abuse, need to be involved in the situation.

Our people not only represent the children in the civil proceedings, but also, often follow these children through the criminal procedures in terms of trying to make them more comfortable with the situation, and explaining to the variety of law enforcement and criminal justice people, the special limitations that these children have.

We thank you for the opportunity to testify and Miss Galbraith, who is with the Alabama Protection and Advocacy System is here with me today, and will continue the testimony.

[Prepared statement and responses to written questions follow:]

PREPARED STATEMENT OF CURTIS L. DECKER

Mr. Chairman, members of the committee. I am Curtis Decker, government liaison for the National Association of Protection and Advocacy Systems, Inc. Previously I was the Executive Director of the Maryland Disability Law Center and Executive Director of a statewide Child Abuse and neglect resource project for the state of Maryland.

The National Association of Protection and Advocacy Systems was created by the Developmentally Disabled Assistance Bill of Rights Act PL 94-103. Protection and Advocacy Systems (P&A) for persons with developmental disabilities were mandated by Congress in PL 94-103 in response to public outcry against abuse and neglect to which those persons were subjected. The mandate was renewed in 1978 and again in 1981. Funding for the program began at $3.5 million and has increased to $13.75 million into FY 1985.

P&As operate in 50 states and 6 territories. Each governor must designate an agency to serve as the P&A and assure that the agency is independent of service providers to assure conflict-free advocacy. The P&A must also have the authority to pursue the legal rights of its clients. Thirty-two states have placed the P&A in nonprofit corporations, while the rest have placed the service in existing state agencies. While all systems have the capacity to bring legal action on behalf of their clients, they have developed a tradition of successful negotiation, settling 97% of their cases without resort to litigation.

In 1985, the fifty-six agencies represented over 80,000 individuals with developmental disabilities. Abuse and neglect of persons with developmental disabilities in facilities and their own homes comprised a significant percentage of those cases.

All P&A systems are mandated to focus on abuse of persons with developmental disabilities who reside in facilities. Many agencies have also worked with children with developmental disabilities who were abused in their own homes or by caretakers. In both situations, a concern has surfaced about the trauma experienced by these individuals during the investigative process and the eventual legal action, whether civil or criminal.

NAPAS commends the chairman on the sponsorship of this legislation. The P&A system is daily faced with the serious issue of abuse and exploitation of handicapped individuals including developmentally disabled children.

It is important for the Subcommittee to recognize the special vulnerability of children with handicaps to incidents of physical and sexual abuse. Several factors contribute to this vulnerability:

1. The generally accepted dynamic of the abuse situation involves parents unrealistic expectations of their children. The inability of children to meet this high standard along with stressful family conditions often triggers abuse. A child with a handicapping condition often unwittingly plays into this senario in that (1) the child with developmental disabilities cannot live up to the expectations of the family and (2) the additional financial and psychological burden on a family in caring for a handicapped child can be extremely stressful.

2. The presence of impaired communication skills will often affect the positive interaction between parent and child. In addition, this lack of communication skills will hamper investigation in abuse situations as well as subsequent legal actions.

3. The physical limitations often associated with a disability place these children at greater risk.

Clearly the intent of this legislation would have a great impact on children with handicapping conditions. NAPAS urges that specific language be added to the legislation highlighting the specific needs of abused children who are handicapped.

Also, specific techniques and approaches will need to be developed to adequately reduce the trauma experienced by this population. For example, the P&A experience has identified the need to use in camera proceedings for these children more frequently than in other cases. Often these approaches must be extended to children who are older, since the particular disability may mean a lack of understanding, despite the chronological age of the child.

Special communications methods may have to be developed to adequately address the needs of these children. The criminal and civil justice system in general has experienced difficulty interacting with certain disabilities such as mental retardation. Persons with mental retardation have often been ignored as credible witnesses. Often the disabled person is intimidated by the police station or court setting. Attorneys often attempt to confuse and discredit the witness. The fear of retaliation is usually based on very real experiences. The length of time between the incident and the legal action is a particular problem for persons with a mental deficiency. A possible remedy is the use of qualified professionals who have worked with a handicapped child, who have worked with a handicapped child to be involved who can help the communication process and lessen the anxiety created by the threatening environment.

Again, NAPAS wishes to thank the Subcommittee for this opportunity to testify and hopes this legislation will win speedy approval.

Responses of Curtis L. Decker to Written Questions From Senator Denton

6TH AMENDMENT RIGHT TO CONFRONT ACCUSOR

Question No. 1. As I noted earlier, the sixth amendment provides the accused with the right "to be confronted with the witnesses against him," and any move to balance that right to confrontation with a child victim's right to be protected has raised constitutional questions.

From your testimony, it would appear that the developmental disabled child victim may have a stronger need for a modification of the hearsay rule, the competency rule or the use of videotaping or closed circuit television. Does this stronger need help reconcile the need to protect the victim with the sixth amendment rights of the accused?

Answer No. 1. *6th amendment right to confront accusor.*—NAPAS believes strongly in protecting the 6th amendment right to confront one's accusor. However, we believe that an adequate balance can be struck between protecting that right of the accused while protecting the right to have full disclosure of the events of the incident of the child abuse victim who is handicapped. Not to allow some modification of the hearsay rule, competency rule, use of video taping or closed circuit television or other techniques would effectively eliminate many abuse victims who are handicapped from utilizing the criminal and civil justice system. Often the only witness is the abuse victim or another person who is handicapped. Too often these handicapped persons are ignored and their accounts of abuse are not taken seriously simply because of their actual or perceived diminished abilities. Modification of the above mentioned evidentiary rules and procedures should also be considered for the older child who is handicapped since chronological age is not a true measure of a handicapped minor's ability to understand the nature of the proceedings in which they are involved.

INNOVATIVE TESTIFYING TECHNIQUES

Question No. 2. Courts are using a number of innovative testifying techniques, such as allowing the child to testify from the lap of a parent or trusted friend and the use of anatomically correct dolls and drawings to describe the abuse.

Are these any testifying techniques which may be even more beneficial to the developmentally disabled child victim?

Answer No. 2. *Innovative testifying techniques.*—The child victim with developmental disabilities should have access to all techniques presently in practice in a particular jurisdiction. Additional techniques that could be used include:

a. In camera proceedings which allow the judge or master to interview the child alone and without interference.

b. Allowing professionals who know the child to participate in the process. This practice would allow for better interpretation of what the child is understanding of certain words or actions.

c. Flexible physical sittings such as allowing the child to testify from under the table (similar to setting on a supporting persons lap).

d. Escorting the child to the courtroom, police station, etc. beforehand to familiarize the child with the setting by an empathetic person (parent, advocate, service provider, etc.).

All of the above have been used successfully by Protection and Advocacy agencies throughout the country in their work with abused children with handicaps.

MODIFICATIONS TO S. 1156

Question No. 3. Can you suggest any modifications to my bill which would recognize the special needs of the developmentally disabled child victim and would give the judge the discretion to not only look at the "child's" chronological age but his functional level?

Answer No. 3. *Modifications to S. 1156.*—Section 1404A(c)(1)(A) add . . . ", and appropriate personnel when a child with a handicap is involved."

Section 1404 A (c)(2) new (E) extending these procedures to children with a hanicap regardless of chronological age.

Report language: "In order to address the special needs of child abuse victims who are handicapped, each state is encouraged to involve the state's Developmentally Disabled Protection and Advocacy System."

RESPONSES OF CURTIS L. DECKER TO WRITTEN QUESTIONS FROM SENATOR SPECTER

Question No. 1. Based on your experience, what is the potential for psychological trauma to children resulting from their involvement in the prosecution of child sexual abuse cases?

How, in your opinion, will the provisions in this bill reduce this trauma for the child victim witness?

Answer No. 1. The potential for severe psychological trauma resulting in servious regression in development could occur in child abuse victims who are handicapped as they become involved in the law enforcement system. Additionally, fear of retaliation and reprisals to this vulnerable population by the abusor or others is an added trauma. This bill attempts to address this difficult problem by minimizing the detrimental effects of a legal process which does not often take into account the needs of the victim. It is important to remember that prevention of abuse through adequate services and training is the primary and long term solution to this problem.

Question No. 2. What is your view regarding the source and level of funding for this legislative initiative?

Answer No. 2. The initial authorization of $10,000,000 appears adequate to begin to address this issue. If these funds become available, it is imperative that the Department of Justice expend the funds for the purposes intended in a timely manner and that Congress monitor the Department's granting process.

Question No. 3. How do you view this legislation in light of the Senate's passage of S. 140, the "Children's Justice Act?" Do you believe these bills are complementary regarding approach, goals, and funding sources?

Answer No. 3. While S. 140 and S. 1156 are similar in their approach to the problem, S. 140 does not contain language placing special emphasis on the needs of children with handicapping conditions. The sponsor of S. 1156 has assured NAPAS that such special emphasis will be included. Also, the difficulty of obtaining new money for S. 140 may make its passage unlikely at this time.

STATEMENT OF SUELLEN R. GALBRAITH

Ms. GALBRAITH. Yes. I would like to add just a few comments to what Curt has said. I am reminded of a recent magazine article which began with, "Are you going to hurt me, too?" That was a question asked by a young boy who had been severely beaten by his father upon being introduced to an attorney, introduced by social workers, and, I think that question is better asked, again, to all of us, and society, rather than just to one or two individuals.

I think S. 1156 goes a long way in helping us to change our response to that little boy's question, and to all children who suffer from abuse and neglect.

Children with disabilities, as Curt said, are generally accepted by professionals, that is, to be more vulnerable to abuse.

The three or four characteristics normally associated with child abuse, those that are characteristics of the child, with children that are disabled, the expectations, high expectations which are sometimes unrealistic as Curt pointed out. The fact that they are different, perceived different, in no matter what way they are perceived. The characteristics, then, of the abuser as well, and the situation in terms of crises, or series of crises. I think one can look at, define some of the explanations for the high-risk nature of abuse among children with disabilities.

The Protection and Advocacy System in Alabama does deal with abuse cases, complaints, and as Curt said, there are such resources available in every State in the Nation, I would encourage members of the subcommittee to encourage States, in developing the innovative measures, to look to their own resources in their States.

The protection and advocacy systems have a great deal of experience in training and education of other professionals, including attorneys, judges, and law enforcement personnel.

So I think that there exists already the body to assist the State and State agencies, and P and A systems also have experience in addressing systems advocacy and legislative advocacy in terms of children or adults with disabilities.

One of the concerns that has been raised earlier today, the presumption of the competency of a witness, of a child, I think is extremely important in terms, again, of this population.

I think we need to have that presumption adopted also with children who have disabilities. Again, we need to direct the special services or needs that children have, design them, rather, around their individual needs, and not make some general classifications—for example—that "all mentally retarded children, this or that," or, that children without communications skills cannot provide competent testimony.

Again, to look at some of the special needs that children have in terms of minimizing the trauma in the investigation, adjudication stages, interpreters may be necessary for those with communication problems.

Some children may need to provide testimony with the aid of a trusted caretaker who is familiar with their manners in communicating. I think this expertise does exist within the States, not only within the P and A systems of course, but within the network of disability organizations in every State.

And again to reiterate something that Curt said, I think we really need to address this discrepancy between chronological age and mental age, particularly with reference to persons with mental retardation.

And I would hate to see that due to State laws with a definition of a chronological age, that persons with mental retardation, in particular, would escape the protections of S. 1156, when in fact their mental age, or their limited judgment renders them more likely to be childlike.

I want to make it plain that I do not subscribe to a perspective that persons with mental retardation are eternal children. I think that we need to make that distinction, that they may need additional help.

[Prepared statement, responses to written questions and articles follow:]

PREPARED STATEMENT OF SUELLEN R. GALBRAITH

I would like to commend Senator Denton and the members of the Subcommittee on Juvenile Justice for their efforts to minimize the additional trauma routinely faced by child victims in the investigation and adjudication of child abuse cases. As the Director of the Alabama Developmental Disabilities Advocacy Program, the state's designated system to provide protection and advocacy services on behalf of Alabama's 54,000 children and adults with developmental disabilities, I am most aware of Senator Denton's past efforts as an advocate on behalf of children. It is most noteworthy to mention one such recent action that has great impact on the lives of neonates born at high risk. Your co-sponsorship last year Senator Denton of the Child Abuse Amendments of 1984 and specifically Subsection K of the Amendments which prohibits the withdrawal of food, water, and medical treatment to infants born with handicapping conditions, is an important safeguard for our most vulnerable children. Alabamians are indeed proud to recognize your leadership in sponsoring S.1156, the "Child Victim Witness Protection Act of 1985." This legislation represents yet another step forward in the protection of our nation's most precious resource and yet again establishes the important role of government's accountability in safeguarding all children, including children with disabling conditions.

"Are you going to hurt me too?" was the question asked by an abused four-year old boy of the attorney introduced to him by social workers in the October 13, 1985 issue of Parade Magazine. His face bandaged and his arms covered with cigarette burns, the young boy asks a question which is really better addressed to all of us--to society at large. I believe that S.1156 is a much needed step toward changing our answer to that little boy's question, "Are you going to hurt me too?" For, after suffering abuse at the hands of one, victims of child abuse often face additional physical and psychological trauma by many who are charged with post-abuse responsibilities intended to assist the victim and bring the perpetrator to justice.

Child abuse, in all of its ugly forms and delivered by a variety of adults ranging from trusted parents, relatives, teachers, residential caretakers as well as strangers, is often referred to as the "silent crime," the "crime of conspiracy," and "the hidden epidemic." The crime of child abuse is encouraged if not allowed to continue when the cry for help from a child goes unheeded as reports from non-adults are discounted or the child's credibility is attacked; when multiple investigations, sometimes by individuals poorly trained, insensitive or biased in their attitudes toward children, confuse children or in some manner provide disincentives toward the prosecution of child abuse cases; when court proceedings further intimidate and victimize the child victim through exhausting proceedings, numerous delays and postponements, and expectations of children which are difficult for adults to meet; and when children learn that adults are freed from the penalities for their crime and learn that the very institutions designed to protect children are in fact often as helpless and impotent as themselves in stopping the crime of child abuse.

It is important, therefore, that S.1156 in both its name and in its specifics address the protection of victims of child abuse with respect to the investigation and adjudication of child abuse cases. To ensure that the aims of S.1156 are intended to benefit all children as victims of child abuse, it is important that this Subcommittee and the Congress include measures designed to meet the special needs of children with disabilities who are victims of child abuse.

Children with disabilities have despite their handicaps, many of the problems and needs of all children. However, there is evidence that the handicapping conditions of disabled children may increase their susceptibility to child abuse. Although no study has established a definite causal relationship between disabling conditions and abuse, the National Committee for Prevention of Child Abuse in its publication entitled "The Disabled Child and Child Abuse," states that several studies have indicated"that there is a correlation, and professionals believe that disabled children do constitute a high-risk group for abuse.[1] The factors generally accepted in association with child abuse, the characteristics of the child, the characteristics of the abuser, and a crisis or series of crises, offer an explanation for the heightened vulnerability to abuse of children with disabilities. The child's disability and the perception that the child is somehow different from the parent or caretaker, the child's dependency and their encouragement to be more compliant, the stress and frustration of providing extended care to a disabled child as well as the increased expenses involved in providing care, and the expectations of meeting special needs combine to increase the potential for child abuse and make the disabled child an easy target for all forms of abuse.

Consider the following case examples of disabled children in Alabama who were also the victims of child abuse. A young male adolescent with a mental disability was forced to drink tabasco sauce, blinded in one eye with Drano, had buckshot stuffed in his ears, and was subjected to sexual abuse by his father over a period of years. This adolescent, like seventy-five percent of the juveniles incarcerated in Alabama, finally found himself before the juvenile court in Montgomery. In September of this year an evangelist in south Alabama was convicted of sexually abusing his adopted "deaf-mute son" when the boy was fifteen years old. According to testimony during the trial, this father of ten children "struck the youth with an electrical extension cord, an ax handle, a bamboo stick and other objects on numerous occasions."[2] One case referred to the Alabama Developmental Disabilities Advocacy Program (ADDAP) involved a seven-year old with mental retardation and physical disabilities who was temporarily removed from the care of his mother and upon his return to her care was severely beaten within days, receiving additional brain injury and requiring a tracheotomy.

As a charter member for seven years and past president of Parents Anonymous of Tuscaloosa, Inc., a member of the Seventh Congressional District Council of the State Children's Trust Fund, and as Director of Alabama's protection and advocacy system mandated by the Congress in the Developmental Disabilities Act, I am aware of the increase in child abuse reports in Alabama in the past few years. Although the incidence and prevalence rates for disabled children are not available in connection with reports of child abuse, I am aware that such cases are reflected in the 28,000 reported cases in Alabama for 1984. Currently, handicapping conditions are not among the information required nor collected through child abuse reports to the state's child protective services agency. I believe that this oversight is indicative of the attention that society in general has failed to place relative to the special needs of children and adults with developmental disabilities. Unfortunately, Alabama is not alone in its failure to require information on handicapping conditions of children in abuse reports. Although the collection of this data and demographics, nature of abuse, frequency, and other statistical data would be most helpful in planning and providing prevention and treatment services to disabled victims of child abuse, this information is significant in relation to the aims of S.1156. The identification of disabled children in child abuse reports has bearing on the immediacy and nature of a response to the reporting of child abuse, the alternatives and special services needed, and the training and special expertise necessary to investigate abuse cases and successfully prosecute the perpetrators.

I applaud the efforts of this Subcommittee in addressing the importance of minimizing additional trauma to the child victim and improving through specific procedures and encouragements to states the chances of successful criminal prosecution or legal action. However, I respecfully encourage the Subcomittee to include language in this legislation emphasizing the special needs of disabled victims of child abuse and the development of innovative measures by states and their authorities in the investigation and adjudication of such cases. I believe that action would help ensure that the aims of S.1156 include protection for all children.

Most people recognize only obvious disabilities, such as persons with visual or mobility impairments for which accomodations contained in S.1156 or the development of innovative methods consistent with the bill would also be more obvious. However, other disabling conditions are not so obvious and not so readily recognized by the average individual, for example mental retardation, specific learning disabilities, epilepsy, emotional disturbances, hearing and communication impairments. Whether obvious in identification or not, disabling conditions present special problems and call for innovative procedures in relation to the investigation and adjudication of child abuse cases.

The existence of a state protection and advocacy system on behalf of persons with developmental disabilities, the Congressional mandate to protect the legal and human rights of such persons, and the authority to provide legal, administrative and other appropriate remedies is an excellent resource to states in carrying out the aims of S.1156. That such systems are available in every state, have experience in working with state agencies; provide training and education to professionals including child protective service workers, attorneys, judges, mental health and social service workers; are required by the Congress to provide information and referral services; maintain relationships with the disability networks in each state; have experience in addressing child abuse complaints; have access to nationwide electronic data systems and disability expertise; and maintain professionally trained staff experienced in multidisciplinary team approaches offer states opportunities to coordinate the activities contained in S.1156. In addition, protection and advocacy systems have the experience as "advocates" in both client related activities as well as systems and legislative activities. Congress has repeatedly recognized these systems as successful programs experienced in both negotiation and litigation. Likewise Congress has recognized the need to protect children and adults with developmental disabilities from abuse in the home, the community, and institutional settings. This past year the Senate has held hearings on abuse in mental health and mental retardation facilities and passed legislation to provide additional protections to persons in twenty-four hour a day residential facilities providing mental health treatment and services with the existing protection and advocacy systems designated to provide services under the "Protection and Advocacy for Mentally Ill Persons Act of 1985."

That the credibility of child abuse victims is suspect by some is of concern to me especially in light of children with physical and/or mental impairments where their limitations are presumed to prevent them from serving as competent witnesses. The disabled child's ability to communicate the abuse suffered, relay facts about the abuse during investigative proceedings, and serve as a reliable witness is a presumption that must be accorded to children with disabilities as well as non-disabled children. The challenge of developing innovative and creative methods and procedures designed to meet the individual needs of each child must be included in the investigation and adjudica- of child abuse cases involving children with disabilities. Although the rights of the accused must be protected, the challenge in meeting the balance of the rights of the victim and the rights of the accused must not be viewed as a task to impossible or difficult to meet in order to provide the protective aims desired in S.1156.

I also strongly encourage the Subcommittee to consider the protection, needed reforms, and modifications necessary to include interpretors, trusted caretakers, professionals experienced in the treatment, residential, and community services, and other individuals familiar with the disabled child victim to assist in the investigation and adjudication of child abuse cases. In order to carry out the aims of S.1156 and ensure the protection of child abuse victims, special consideration in reducing the trauma of unfamiliar surroundings and unfamiliar people may be needed to facilitate the investigation and adjudication of abuse cases involving disabled child victims.

Lastly, I encourage the Subcommittee to consider and address the protection of adults with mental retardation which severely limits cognitive functioning and reduces the mental judgements of persons whose chronological age is that of an adult, but whose mental age is that of a child. While I do not subscribe to the treatment of persons with mental retardation as "eternal children" in so far as limiting their potential for increased independence, productivity, and integration into the community, I do not wish for this discrepancy between chronological age and mental age to place persons with mental retardation outside the specific modifications listed in S.1156 nor the encouragements for states to develop additional measures to protect adults whose mental age is that defined by states as consistent with child victims.

FOOTNOTES AND BIBLIOGRAPHY

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RESPONSES BY SUELLEN R. GALBRAITH TO WRITTEN QUESTIONS FROM SENATOR DENTON

6TH AMENDMENT RIGHT TO CONFRONT ACCUSOR

Question No. 1. As I noted earlier, the sixth amendment provides the accused with the right "to be confronted with the witnesses against him," and any move to balance that right to confrontation with a child victim's right to be protected has raised constitutional questions.

From your testimony, it would appear that the developmental disabled child victim may have a stronger need for a modification of the hearsay rule, the competency rule or the use of videotaping or closed circuit television. Does this stronger need help reconcile the need to protect the victim with the Sixth Amendment rights of the accused?

Answer No. 1. Yes, S. 1156 does help reconcile the need to protect child victims of abuse, whether the child is developmentally disabled or non-disabled, with the sixth amendment rights of the accused. It is not lightly that I advocate what might appear to be a weakening of a constitutional guarantee that protects defendants in criminal cases. However, exceptions to the right of confrontation have existed since the days of the common law. Certain testimony has traditionally been recognized as so reliable or so important that it is to be allowed into evidence even when the right to confrontation is compromised. Exceptions such as the admissability of a person's dying declaration or testimony from a prior trial recognize that this constitutional right must be balanced with the realities of life.

It is in light of such realities as well as the unique nature of the crime of child abuse that the evidentiary considerations raised by S. 1156 must be approached. I concur with experts in the field of child abuse in pointing out the difficulties involved with the successful prosecution of child abuse and with the sponsors of S. 1156 in attempting to remove some of the inherent obstacles by encouraging innovative procedures and techniques to realign the constitutional rights of the victim with that of the accused. Due to the nature of child abuse and current barriers to successful prosecution and since other adequate procedural safeguards exist, the legal rules of evidence should recognize and accept testimony from younger victims under circumstances not normally acceptable with adult witnesses testify.

Your question correctly reflects my belief that a developmentally disabled child victim presents justification for modification of the hearsay rule, the competency rule or the use of videotaping. However, it must be stressed that S. 1156 already emphasizes the special needs of children and, through encouragements to the states, prompts the establishment of procedures and techniques to "implement protective reforms regarding the investigation and adjudication of child abuse cases." In this sense then, S. 1156 already makes compelling arguments for children *in general* in that as younger victims they have a stronger need for such reform and modifications. Therefore, my previous statement was offered to ensure that no less be offered to children with developmental disabilities. Such children are first and foremost children; secondly, children with disabilities constitute a high-risk group for abuse; and, lastly, the disability(ies) *may* require modification(s) some of which are mentioned in the bill and others of which might not be developed by the states without recognition of the unique needs of a particular child.

Therefore, I am not setting forth any new principle or "special provision" to establish any different right for the developmentally disabled child who is a victim of abuse, but rather that such children be included in the assessment process and reforms encouraged under S. 1156. S. 1156 already seeks to restore to children the tools (based upon each child's needs and in consideration of such factors as their cognitive, emotional, receptive and expressive language levels, etc.) necessary to confront the accused, to bear competent witness, thus permitting the courts to more effectively carry out their charge.

The use of videotaped or televised testimony does not in and of itself weaken the accused's right to confront an adverse witness. Alabama, as with other states, currently find their use admissable in courts. As a practical matter, "confrontation" under modern court procedure simply means the opportunity for the defendant's attorney to cross-examine the witness. This questioning need not take place in the courtroom. When the right to confront was created in the Bill of Rights, the criminal defendant had no absolute right to representation by an attorney. The framers of the Constitution obviously intended to protect the defendant from secret and unsubstantiated accusations. The spirit of this Constitution guarantee is not violated by the goals or the methods of S. 1156. For just as the law has evolved to the point that the accused is unconditionally entitled to legal representation, the law can constitutionally be modified to allow the developmentally disabled child to be heard.

Each child deserves the opportunity to express his/herself under circumstances that make their testimony available and understandable to a trial court judge, jury, prosecution, defense, and the accused. This carving out of new territory is less a weakening of 6th amendment rights, than an amplification of a "voice" by whatever means is needed for each child. Amplification of a voice that might not otherwise be heard and accorded constitutional protection without the impetus of S. 1156. S. 1156 with a heightened recognition of the unique needs of children, disabled or non-disabled, with its current provisions and encouragements for developments by the states, places within the reach of *any* child the necessary tools of communication to safeguard the child's rights and thereby places within the reach of all of society the needed safeguards to the entire judicial process.

MODIFICATIONS TO S. 1156

Question No. 2. Can you suggest any modifications to my bill which would recognize the special needs of the developmentally disabled child victim and would give the judge the discretion to not only look at the "child's" chronological age but his functional level?

Answer No. 2. I believe that the construction of the bill offers several opportunties for slight modifications that would heighten the recognition of children with developmental disabilities. Although each child, disabled or non-disabled, should be "assessed" individually so that each child's special needs might be recognized, the following modifications are suggested:

Section 1404(c)(1)(A)—include within the procedures for establishing interdisciplinary teams *a person or persons with special expertise in the disability or disabilities of the child.*

As this team can provide the *initial identification* of a child's disability(ies), *recognition of special needs,* and *assessment of specific tools or techniques* for each child, disabled or non-disabled, the team can also serve another important function throughout the investigative and adjudicative processes—that of liaison role with other participants in the process. States might then develop procedures for the team (or its designee) to work with the prosecution and defense in establishing modifications to procedures or special techniques which will be used in the court.

I would also like to emphasize that many states, including Alabama, do not identify on reporting forms within the child protective service agency that the child abuse victim is handicapped, nor the extent of their disabling conditions. Without the collection of this important information, the assessment value of the interdisciplinary team becomes even more vital.

Section 1404(c)(1)(C)—no specific modification sought in the bill, but report language is needed to stress that special units and training to the various participants in the investigative and adjudicative processes as outlined in the bill should include training on disabilities and special needs that may be encountered. Child protective service workers should be included in the need for such training.

Section 1404(c)(2)—a separate subsection would be helpful in encouraging states to develop special procedures which recognize that delays to "normal child development" do exist and that consideration should be made for the emotional, cognitive, psychological, physical development of children with special emphasis on children with special needs.

The diminished physical and/or mental condition of a developmentally disabled victim of abuse should not disqualify the person's testimony. The law has never fixed an absolute standard of intelligence required of a witness. Instead, the determination of witness competence has wisely been left to the discretion of the court. There is simply no reason why trial judges could not assess the fairness of special circumstances to elicit testimony that would otherwise be unavailable. Children have been held to be competent witnesses, regardless of age, when they demonstrate sufficient capacity to understand the solemnity of an oath and to correctly relate impressions of the facts about which he/she testifies. Expert testimony to your Subcommittee has indicated that children may be generally more reliable than adults in this regard. Again, the law must evolve with the evolution of society. The recognition that persons (adults and children) with developmental disabilities (including mental retardation) have far greater competence and capacity if provided with the means to carry out their full potential has been recognized by the Congress throughout the last two and one-half decades in its various federal statutes as well as by state statutes throughout the nation. S. 1156 is a significant step toward reforming the laws of evidence, while retaining constitutional protection for criminal defendants, but with recognition of the *strengths* as well as the limitations of persons with developmental disabilities.

INNOVATIVE TESTIFYING TECHNIQUES

Question No. 3. Courts are using a number of innovative testifying techniques, such as allowing the child to testify from the lap of a parent or trusted friend and the use of anatomically correct dolls and drawings to describe the abuse.

Are there any testifying techniques which may be even more beneficial to the developmentally disabled child victim?

Answer No. 3. It would be impossible, of course, to exhaust all the possible techniques which would be beneficial to the developmentally disabled child victim. Nor would it be wise to state categorically that a particular disability prescribed only one innovative technique. It is hoped that this bill will challenge the states to continually develop new techniques and that advances in technologies will aid in the discovery of such techniques. Again, it must be stressed that the individual needs of each child based upon the professional assessments of the child's weaknesses and strengths will be the point of departure for aiding the child.

Some examples are provided as suggestions to the Subcommittee for encouragement to states:

Voice/Hearing Impaired.—Judges and juries need to be acquainted with the fundamental principles of manual communication prior to "hearing" the testimony of the deaf. A gesture in sign language does not necessarily represent a precise English word, and deaf or severely hearing impaired children usually understand signs better than fingerspelled words. Courtroom interpreters should be authorized by the court to convey not only the exact questions that elicit the testimony of deaf children, but also to supplement fingerspelled words with colloquial expressions and signs so that these children can accurately understand and respond.

Other techniques such as hearing aids and amplifiers should be available to children. Not all children with hearing impairments possess the needed equipment and the courts should have such available for testifying. Children who practice "total communication" (signing and voice) could be aided by electronic devices. In 1982 the Supreme Court heard, for the first time in history, arguments from a "deaf attorney" due to electronic equipment which translated into the written word, the oral words of the attorney. Communication boards are used by persons with cerebral palsy and other disabilities who cannot communicate orally. The use of the board and overhead projection would make the response available to members of the court.

Physical Impairments.—Children confined to wheelchairs, hospital beds, and other supports should not have to provide testimony in the traditional manner from the witness stand. Some children with mobility problems may need assistance in testifying from the stand, transfer from a motorized aid, or flexibility due to positioning with supports. Due to the severity of the physical and/or medical conditions, some children might need the closed circuit or videotaping techniques already suggested so as to allow them testifying in their own environment.

Other allowances may need to take into account the affects of lengthy and prolonged questioning and permit frequent breaks for the child. Some children with a disability, for example, with mental retardation, would be aided by the support of a trusted caretaker, a caretaker who might not be a parent due to residential placement in a group home or institution. This technique should be available, however, not based on the specific disability, but rather the special needs of the individual child so as not to exclude children with other disabilities. Other techniques to aid children in light of reduced cognitive functioning might include pictorial displays, exhibits, etc. to relay concepts just as the anatomical doll is used to aid children in sexual abuse cases. Children with visual impairments may be aided by materials in braille or other raised surface exhibits. Seeing eye dogs might be effective for children as support.

RESPONSES BY SULLEN R. GALBRAITH TO WRITTEN QUESTIONS FROM SENATOR SPECTER

Question No. 1. Based on your experience, what is the potential for psychological trauma to children resulting from their involvement in the prosecution of child sexual abuse cases?

How, in your opinion, will the provisions in this bill reduce this trauma for the child victim witness?

Answer No. 1. The potential for additional psychological trauma to children resulting from their involvement in the prosecution of child sexual abuse cases is great. Without the special considerations suggested in S. 1156 there is also a greater potential that the "voice" of the child will not be heard, justice not served, the secret crime of child abuse continued to go unpunished, and the perpetrator escape the system only to continue the crime against other children. Victims of abuse need their crime brought out, to communicate their violations, and to find some resolution to the crime perpetrated against their person. However, in eliciting the testimony of child victims of abuse, children need not be subjected to the standards for which even adult victims of abuse are traumatized. Children must be assisted to provide their testimony in the form and manner by which they can best communicate so that their testimony is available, understood, and perceived as credible. It is the nature of our adversary system that one party will attempt to discredit the testimony of the other party. Children must be made to feel and believe that someone will listen to them and protect them throughout this process.

Question No. 2. What is your view regarding the source and level of funding for this legislative initiative?

Answer No. 2. The source of this funding appears appropriate in that there is the natural link between the U.S. Attorney General and the various state attorney generals. The level of funding would also appear to be appropriate as an incentive to states.

Question No. 3. How do you view this legislation in light of the Senate's passage of S. 140, the "Children's Justice Act?" Do you believe these bills are complementary regarding approach, goals, and funding sources?

Answer No. 3. I am not familiar with S. 140 or the specifics of the Children's Justice Act.

ADDAP

Alabama Developmental Disabilities Advocacy Program

FACT SHEET

WHAT IS ADDAP?

The official state agency to protect the legal rights of people who become disabled when they are children.

WHO IS ELIGIBLE?

Any person, young or old, with a developmental disability who has a problem related to the disability.

WHAT IS A DEVELOPMENTAL DISABILITY?

A long-lasting physical or mental condition that starts when a person is a child and is so severe that the person needs special services all his/her life.

WHAT EFFECT MUST THE DEVELOPMENTAL DISABILITY HAVE ON AN ADDAP CLIENT?

The person must be unable to do three or more basic tasks such as talking, walking, hearing, seeing, learning, living alone, or working without help.

WHAT ARE SOME OF THE DEVELOPMENTAL DISABILITIES?

Mental Retardation • Cerebral Palsy • Epilepsy • Autism • Deaf/Blind • Spina Bifida • Severe Mental Illness in childhood • Multi-handicaps • Any other severe condition which causes a child to stop developing normally.

WHAT ARE SOME PROBLEMS ADDAP CAN HELP WITH?

School problems • Unjust denials of services from agencies • Denials of disability benefits or other public benefits such as Medicaid • Rights in institutions • Discrimination in housing, transportation, or employment • Abuse or neglect • Denial of right to vote • Any other problem directly related to the disability.

WHAT CAN ADDAP DO?

Investigate problem • Negotiate solution • Represent client in formal hearings and appeals, or court action when necessary • Teach parents or developmentally disabled people about their rights.

WHO OPERATES ADDAP?

The Clinical Program of the Law School of The University of Alabama in Tuscaloosa.

WHERE MUST A PERSON LIVE TO GET ADDAP SERVICES?

Anywhere in Alabama; ADDAP's staff will travel to the client as needed.

WHAT DOES IT COST?

Nothing, but contributions are welcomed.

HOW TO CONTACT ADDAP?

Dial 0-348-4928. Tell the operator you are calling collect to an advocate. Or write us at this address:

ADDAP
918 4th Avenue
Tuscaloosa, AL 35401

WHEN IS THE OFFICE OPEN?

Monday - Friday from 8:00 to 5:00; closed on major holidays.

LET ADDAP HELP

[From the Tuscaloosa News, Sept. 12, 1985]

Evangelist Convicted in Abuse of His Adopted Deaf-Mute Son

Bay Minette.—A man described as an evangelist with 10 children was convicted of sexually abusing his adopted deaf-mute son when the boy was 15.

The circuit court jury deliberated about two hours late Wednesday before convicting William Earl Butler of first-degree sexual abuse and his wife, Carol Butler, of second-degree sexual abuse.

Butler was accused of regularly beating the deaf-mute boy and that out of fear the youth submitted to having sexual intercourse with his mother and that Butler performed oral sex on the youth during the incident two years ago.

District Attorney David Whetstone said he regretted that "the laws of this state would not allow me to prosecute for the rape of a male child." He said the evidence presented "shows that a boy can be raped."

Butler's conviction carries a possible sentence of from 2 to 20 years. Mrs. Butler conviction carries a possible penalty of 12 months in prison and a $2,000 fine. A date for sentencing wasn't immediately set.

The couple from the Marlow community often sat holding hands at the defense table. Both brought a Bible to each courtroom appearance.

Butler did not testify, but his wife told the jury that Butler was an evangelist and the father of 10 children.

A welfare caseworker said Butler told her the disciplining of his children was his "God-given right." According to testimony during the trial, Butler struck the adopted youth, now 17, and two younger brothers with an electrical extension cord, an ax handle, a bamboo stick and other objects on numerous occasions.

Butler's 27-year-old daughter from a previous marriage also testified that her father forced her to have sexual intercourse with him and that during the sexual attacks "he would beat me and tell me he would beat me again."

[From Parade Magazine, Oct. 13, 1985]

"Are You Going To Hurt Me Too?"—An Expert Suggests 10 Steps To Curb Child Abuse

(By Andrew H. Vachss)

[Note.—As a lawyer whose clients are mostly children—and in his former positions as investigator for the U.S. Public Health Service, caseworker for the Department of Social Services and director of a maximum-security juvenile institution—Andrew H. Vachss has handled hundreds of child-abuse and sexual-abuse cases. His experience has left him with an unsparing view of the system and little patience for platitudes. His first novel, "Flood" (Donald I. Fine, Inc.), covering similar terrain, is the story of a man and woman's search for a child-molester in New York City. Vachss believes we *can* protect our children. Here he offers 10 suggestions he says can work.]

A 4-year-old boy, one side of his face swathed in bandages and his arms covered with cigarette burns, asks the lawyer who has been introduced to him by social workers, "Are you going to hurt me too?"

I was that lawyer. This young boy, and hundreds of thousands of children like him, has learned to fear the world of adults. The child who asks, "Are you going to hurt me too?" is really speaking to all of us—to society at large. And if we face the hard realities, the truthful answer may well be "yes."

Today, most Americans know that child abuse has become a virtual epidemic. Still, the rhetoric of outrage has run far ahead of the reality of change. We have laws that mandate the reporting of suspected child abuse; we have 24-hour "hot lines" that promise immediate investigation; we have courts specially designed to deal with this issue; and we have more programs and caseworkers than ever before. Yet children continue to be physically maltreated, sexually abused and even murdered in record numbers. Obviously, we're not doing enough.

Child abuse isn't a new phenomenon—it didn't start when the newspapers started reporting the horror stories to the public. But those who believe that the "discovery" of child abuse means all our efforts must now go into "understanding" and rehabilitating the abusers are condemning future generations to attack. Discovering the existence of a killer shark may be important—but studying why the shark kills isn't as important as staying out of the water.

The truth is that, for many of our children, the family continues to be the most dangerous place in America. Many of these abusive families are nothing more than physical and emotional free-fire zones. But, for the most part, children can expect little genuine protection from the system. The protection of children is still regarded as the province of "do-gooders," and many people still oppose government intervention into what they believe is a "family affair." In fact, child abuse is the most rarely discovered of crimes and among the least likely to be prosecuted.

Our society eventually pays the price for its passivity. The survivors of child abuse grow up to haunt us with juvenile crime, drug and alcohol abuse, juvenile prostitution and suicide.

It can't get better until we take a hard look at the situation:

Child abuse cuts across all social, economic, cultural and ethnic lines. Investigative and protective efforts confined to the low end of the socioeconomic spectrum are doomed to failure.

Child-abusers are not all "sick" people who require treatment. In fact, they fall into three basic categories: (1) Parents who are inadequate—that is those who have never learned how to be parents. Such individuals benefits greatly from both rehabilitative and preventive services. (2) Parents who are mentally ill—that is, those whose mental disorders prevent them from reaching minimal standards of parenting. Of this group, some are treatable. And (3) parents who are evil, who physically or sexually exploit their children for profit or pleasure (or both).

Child abuse is a crime. It may be a social problem; it may be the product of a disordered mind; it may indicate an overall family dysfunction . . . but it is always a crime. The public, however, generally does not view it that way. If someone viciously attacks a child on the street, we want him prosecuted for assault. But if he commits the exact same act upon his own child in his own home, we call it "child abuse" and summon the social workers. A child killed by his parents is just as dead as a child killed by a stranger.

We must stop tolerating these crimes. There are changes that could be implemented immediately and would not cost a penny. Yet such changes would have a cosmic effect not only upon children currently being abused but also upon the course of this Nation for years to come. All that is required is that we look at the problem clearly and approach the issues with a unified sense of purpose, Here are 10 suggestions that could be implemented tomorrow:

1. *All reported cases of child abuse should be investigated by professionally trained fact-finders.*—Social workers must first learn the truth of what occurred and only then begin any "rehabilitative" process. We should not shy from referral to the courts or the prospect of a prison sentence for the offender. Currently, child-abuse "investigations" are often performed by individuals who either lack training or whose social philosophy places the rehabilitation of offenders over the safety of the victims. Just as the police use social-work skills in particular situations, it is time that social workers learn some of the skills of the criminal investigator. Similarly, attorneys representing child-protective agencies must be trained in basic prosecutor' skills, and lawyers who represent the children must be specially trained.

2. *The current system of using the same social workers to simultaneously protect the child and rehabilitate the parent must be replaced by separate teams.*—If a lawyer tried to represent both the abuser and the abused, the cries of "conflict of interest" would echo throughout the courthouse. Yet when a social worker routinely does the same thing, we call it "family therapy" and accept it. Current laws require child-protective workers to "work with the total family unit," and too many caseworkers find the dual role impossible to perform. In a choice between an adult who can express (and excuse) himself and a child who may not be able to speak at all, some deadly mistakes are inevitable. It is up to society to bring about the needed legislative changes. Children cannot vote.

3. *A child in danger must be protected.*—Once his or her safety is assured, and only then, we can begin the process of working with the abuser. This could (and often should) mean removal of the offender from the home. Currently, most incest offenders are left in the home on the ground that they are the family bread-winner, while the victim is placed in another setting. Violent abusers are allowed to retain custody of their children when they agree to accept counseling—and too many children "known to social services" die during the rehabilitative process. Unless the victim is shielded from danger, he will perceive that the "helping agencies" approve of (and support) those who abuse him.

4. *Children have a short life as children. We can no longer permit the endless cycle of removal, so-called "rehabilitation," return to the family, continued abuse, removal, more rehabilitation, and so on.*—This process now goes on until the child reaches maturity or the parent commits such an atrocious act that he or she is incarcerated.

5. We must impose standards for parenting.—A "family" is not biologically defined. You need a license to drive a car. Why? Because if you can't drive to a minimum standard, you endanger everyone on the road. An abusive parent is a far greater danger to society than any drunk driver. A moral society will not set standards for becoming a parent, but it will establish irreducible minimums for maintaining that sacred status.

6. The "confidentiality" of the family court must not be a shield to protect the abuser.—The press, which has always been this country's single greatest force for social change, should no longer be excluded from courtrooms where child-abuse cases are tried. Of course, restrictions on the use of the victim's name should remain in effect, and ground rules between the press and judiciary should be established in advance.

7. The government must be as accountable for child abuse as the individual parent.—Inadequate, corrupt or criminal day-care centers, institutions, agencies and foster parents must be held to strict standards, with penalties for maltreatment of the children in their charge.

8. Each family adjudicated as abusive must be given every chance to reform—every chance, but not an endless period of time.—Such families must demonstrate sufficient progress so that the child's safety is assured or be subject to termination of their parental rights. Too many times, a child is removed from an abusive home and placed in foster care while the abusers are "counseled." Years may pass while this process works itself through. when the child finally is returned, another outbreak of abuse simply results in another foster-care placement. In the meantime, the child's life is bleeding away.

9. Social workers must be psychiatrically screened before being allowed to work in the system.—If a social worker believes, for example, that "all children lie" or that children fantasize sexual abuse, he cannot do his job properly. Similarly, employers must be allowed to learn if a prospective applicant for a job involving the custody of children has any prior record as a child-abuser. Currently, only criminal records are available for examination.

10. Finally, we must adopt a "triage mentality" when it comes to child abuse.—That is, we first must invest our time and money in protecting children and only then in rehabilitating those who demonstrate their ability to benefit from such services. A determination should be made as soon as possible as to where we can help and where our efforts are doomed. Rehabilitation of unrepentant criminals is a waste of our financial resources. Society has a finite amount of resources, and it should also have a finite amount of tolerance.

We cannot change some people, but we can change the ways in which we respond to their acts. We cannot achieve perfection, but we can do our best to protect our most precious natural resource—our children. Whenever the juvenile crime rate rises, the press screams for a "get tough" attitude. Isn't it time that we got tough for our children too?

The child who asks, "Are you going to hurt me too?" Is morally entitled to a better answer than we have given him so far. It is our human responsibility to make that answer a truthful one.

For more information, write to: Justice for Children, P.O. Box 42266, Dept. P, Washington, D.C. 20015.

Mr. HOLCOMB. Again, on behalf of Senator Denton and the Subcommittee, thank you for your testimony. I am sure Senator Denton would like to have the article you referred to made a part of the record.

The Senator would also place in the record at this time a pamphlet that you all submitted to us entitled, "The Disabled Child and Child Abuse" by Dr. Donald Klein. The Senator said that that answered a number of questions which he was originally intending to propound to you all.

[The information follows:]

the disabled child and child abuse

Donald F. Kline, Ph.D.

Acknowledgments

The National Committee for Prevention of Child Abuse (NCPCA) gratefully acknowledges those who have made this pamphlet possible. NCPCA extends its appreciation to the author, Donald F. Kline, Ph.D., professor and head of the Department of Special Education at Utah State University in Logan, and to the members of the NCPCA Editorial Committee who critically reviewed this work: Elizabeth Elmer, M.S.S., director of research and training for the Parental Stress Center in Pittsburgh; Elizabeth A. Fetter, associate director of the International Year of the Disabled Person in Washington, D.C.; Wilbur S. Thain, M.D., medical director, and Marvin F. Fifield, Ph.D., director, Exceptional Child Center, Utah State University, in Logan; Leonard Lieber, executive director of Parents Anonymous in Torrance, California; and Donna J. Stone, founder of NCPCA. The development and first printing of this pamphlet have been made possible through a grant from the Kappa Delta Sorority's Fund for Crippled Children.

Introduction

Disabled children have, despite their handicaps, many of the problems and needs of all children. There is evidence, however, that the handicapping conditions of disabled children may increase their susceptibility to child abuse. It is known, of course, that severe abuse can produce handicaps in children. Understanding handicapping conditions and knowing where to find assistance with the special problems of disabled children can be of invaluable help to parents and to those who work with children. Our goal is to free these children from the dangers of abuse and to enable them to live as full and complete lives as possible.

NCPCA Editorial Staff

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Are disabled children more susceptible to abuse than nondisabled children?
No study has established a definite cause-and-effect relationship between disabling conditions and abuse. Several studies, however, have indicated that there is a correlation, and professionals believe that disabled children do constitute a high-risk group for abuse.

What forms of abuse are disabled children most susceptible to?
Like all maltreated children, disabled children are abused and neglected in as many different ways as are nondisabled children. This includes neglect as well as physical, sexual, and emotional abuse. Disabled children do seem, however, to be at greater risk for educational neglect and for institutional and substance abuse than do nondisabled children.

Why are these children at high risk for abuse?
Whenever abuse happens to any child, there are usually several factors present. One of these is that children who are "different" tend to be targets for abuse, and disabled children are in a sense different.

Is it possible to determine if children are different because they were abused or abused because they are different?
This is like asking which came first, the chicken or the egg. Some children are abused because they are different or are perceived to be different, and some children are disabled as a result of abuse.

Can abuse cause children to become disabled?
Yes. There is no question but that some children develop disabilities as a result of abuse. Physical abuse can result in neurological damage and in orthopedic, emotional or behavioral, or any number of other isolated or interrelated problems. Handicapping conditions may also result from malnutrition or from the "failure-to-thrive" syndrome. Children who have been neglected, shunted from one foster home to another, or placed in typical residential institutions are often defeated, distrustful of adults, rebellious, seriously emotionally damaged, and psychologically crippled. They often come into conflict with the juvenile justice system, which too often inflicts even deeper wounds on already wounded people.

In the well-known 1962 study C. Henry Kempe, M.D., and his colleagues found that 85 of 302 abused children in 71 hospitals had suffered neurological damage and that 33 of the children died as a result of their injuries.[1] Another study reported that, out of 50 cases of abused children, 4 were retarded, 2 had neurological damage, and 7 had physical defects.[5] Several other studies have established a clear relationship between abuse and disabling conditions in children.[6,7]

Are most people familiar with the types of disabling conditions children have?

No. Most people recognize only obvious disabilities, for example, children in wheelchairs or on crutches, those who are blind or deaf, children who have parts of their bodies missing or are malformed, or those who are severely mentally retarded.

What other disabling conditions should people be aware of?

Other disabling conditions that are not so obvious and not recognized by the average individual include mild mental retardation, specific learning disabilities, and emotional disturbances. In addition, even fewer people recognize children with two other types of disabling conditions: those who are socially maladjusted and those who are educationally limited.

How are educationally limited and socially maladjusted children identified?

Unfortunately, educationally limited children are not usually discovered until they go to school and begin to fail in their academic work. It is usually only the educator or the parent who is aware of the limitation. These children are frequently among the 20 per cent of the population in the United States that moves each year. Our highly mobile population sometimes causes children to have gaps in systematic instruction. When they miss essential instruction in academic areas and are permitted to continue through school without learning basic skills in math or reading, for example, they fall farther and farther behind their peers. Some educators view this as a form of neglect on the part of parents as well as schools.

Socially maladjusted children fare even worse. Unless they are seen in a juvenile detention facility or other environment that clearly determines that they have a problem, their disability goes unidentified. As a result, most of the educationally limited and socially maladjusted children go undetected. They frequently become rebellious, challenge authority, engage in truancy, and come into conflict with the law.

What are the categories of disabling conditions?

The Special Education Programs in the Division of Innovation and Development, U.S. Department of Education, recognizes the following general categories:

- Mentally retarded
- Hard of hearing
- Deaf
- Speech impaired
- Visually handicapped
- Seriously emotionally disturbed
- Orthopedically impaired
- Deaf-blind
- Multihandicapped
- Other health impaired

It is clear that the last group includes children with a wide variety of specific health problems — with minimal brain dysfunction, congenital heart disease, rubella syndrome caused by German measles, cleft palate or cleft lip, and a variety of other problems that may result in substantial disabilities. Because of the wide variety of conditions the Education for All Handicapped Children Act of 1975 mandates that school placement of these children must be done by a team of experts and must include the parent or caretaker as well as the child when practical.[8]

How many disabled children are there in the United States?

The exact number is unknown, but in 1975 Congress estimated that there were eight million handicapped children in the United States, about 12 per cent of all school-age children.[9] The number is even larger when children below school age are included in the estimate. The Education for All Handicapped Children Act mandates that states receiving federal funding under the law search for those from ages 3 through 21 who have handicaps, although states that do not take responsibility for preschool education may exempt the 3- to 5-year-old group. In 1980 some 238,000 preschool handicapped children were receiving special education services. This represented a 3 per cent increase over the previous year.

Are all 12 per cent of these children born with a disability?

No. It is commonly accepted by physicians that 5 per cent of all live births have some form of disability. This means that 7 per cent of all handicapping conditions occur subsequently. The number of disabilities caused by abuse or neglect is not known.

Why are some babies born disabled?

The causes of developmental defects present at birth, although not always diagnosed at the time of birth, can be broken down as follows:

• Genetic	20 per cent
• Chromosomal aberrations	3-5 per cent
• Environmental (intrauterine)	1 per cent
• Infections	2-3 per cent
• Maternal imbalance (biochemical)	1-3 per cent
• Drugs—including alcohol	4-6 per cent

In 60 to 70 per cent of defects at birth the causes are not known, but half of these cases are probably caused by a combination of the factors noted above.[10]

There is rarely a single cause or explanation of any handicapping condition present at birth. In some cases the handicap seems to be primarily a function of heredity. In others, it seems to be the result of a complex interaction between genetic factors and intrauterine environmental factors; in still other cases the handicap seems to be attributable to factors that are entirely intrauterine. Causes of a handicapping condition may affect a child at any time during the beginning of life. They may occur at the time of conception, at any point while the baby is being carried by the mother, or during birth. One child may suffer the effects of something that happened in a single instant, whereas another's handicap may be caused by a complicated series of interrelated events occurring over a period of months.

What are the most common forms of disabilities occurring at or before birth?

The term congenital handicap describes a condition present at or before birth. Congenital handicaps range from dislocation of the hips to brain damage. If, for example, the umbilical cord is wrapped around the arm of a developing fetus, the arm may fail to develop. A mother's use of alcohol, tobacco, or other drugs may have an adverse effect on the fetus. Obstruction of the oxygen supply to the baby's brain from the time the birth process begins until the baby is delivered may cause brain damage. Children with cleft lip or palate, those with a variety of chromosomal defects, children with congenital deafness or blindness, those with missing or malformed skeletal structure, or children severely traumatized during the birth process all have handicapping conditions at or before birth.

A substantial proportion of mentally retarded children are destined to be handicapped from the moment of conception when the particular ovum unites with the particular sperm to determine the child's genetic endowment. One of the more common types of mental deficiency is Down's syndrome. These children inherit an extra chromosome, which, as far as is known, inevitably produces some degree of retardation.

In other children genetic factors cause damage only in combination with specific environmental factors. Infections occurring during pregnancy—for example, rubella—can cause handicaps, as can inborn errors of metabolism—for example, galactosemia, which is a hereditary defect that makes it impossible for the child to properly metabolize the galactose contained in milk. The effects of other more subtle genetic and environmental processes are still unknown. Fortunately, questions about human heredity are being studied, and answered, from a broader and a more sophisticated perspective and with refined techniques. Great progress has been made in the past 20 years.

How do disabled children feel about themselves?

Many people may believe that the handicapped have a low self-concept, are hostile, aggressive, or withdrawn, or have negative feelings about themselves and about life in general. There is no evidence to support this notion, and we should not assume that it is true.

For example, during the keynote address to a meeting of the American Association on Mental Deficiency, Jean Vynier related the story of Helen, a 21-year-old cerebral palsied woman who had appeared on a nationally televised program in France. When one of the 10 million viewers called in to ask, "Are handicapped people like Helen happy?" Helen, who could respond only by using one finger on a typewriter, wrote, "I would not change my life for anything in the world." And, as others on the program laughed with Helen about her response, she typed the word "Hallelujah!"'

A young man who is severely mentally retarded lives in a neighborhood where my father-in-law lived before his death. During the long illness that preceded Dad's death at age 94, the young man would sit by the hour holding Dad's hand. There was little obvious communication between them, but there was a communion between this retarded youth and a man who, as a prominent lawyer, had spent his life using words to communicate in many ways the great love he had for all people. When the two of them simply sat and held each other's hand, the young man was very happy, and so was his elderly companion. Disabled adults are people. Disabled children are people.

When disabled children appear to be unhappy, when they become frustrated, angry, fearful, hostile, aggressive, and at times — although infrequently — a threat to the community, often it is because they have been taught to be that way. And, of course, these behaviors sometimes trigger abuse.

Are there any other factors that might contribute to a handicapped baby's risk for being abused?

Yes. If a baby is unwanted or wanted for the wrong reasons, for example, to bring about a marriage or to bolster a floundering marriage, that in itself puts the baby at risk. When the reasons for having a baby in the first place are wrong and the baby turns out to be sick or disabled, compounding the wrong reasons, disillusionment and resentment abound, placing the baby in even greater jeopardy. Adults who place the responsibility for solving their problems, or for meeting their emotional needs, on an infant are not assuming responsibility for themselves. These unrealistic expectations and role reversals are common traits among abusive parents. The most beautiful, healthy baby in the world cannot solve the parents' problems.

How do most parents feel or react when their baby is born handicapped?

Parents often enjoy speculating about what the baby will look like, what they'll do together, what kind of parents they'll be. When a baby is born disabled, the distance between reality and what the parents imagined may initially result in shock, denial, guilt, depression, grief, anxiety, or anger. Mothers may feel that they have failed; fathers may wonder if there is something wrong with them. The parents together may wonder if they did something that caused the problem, for example, having sexual intercourse or going bike riding during the wife's pregnancy. These parents are clearly faced with a crisis.

Does this have any relation to child abuse?

Yes. The birth of a healthy baby to any couple is a crisis in that the baby's arrival mandates that changes be made in the parents' lifestyle; new relationships must form, and the husband-wife relationship must undergo adjustments. Although most parents meet these challenges successfully, they cause stress. The couple's ability to adjust to these changes is the central issue. When the normal crisis of having a baby is compounded by the baby's being disabled, the ability of the parents to cope with the added stress directly influences how they deal with the situation. All people have limits to the stress they can handle; potentially abusive parents have a very low tolerance for and are unable to cope with great stress. A handicapped baby born to parents who have the potential to abuse is clearly in great jeopardy.

Are socially maladjusted children handicapped?

The U.S. Special Education Programs does not list social maladjustment as a handicap, but there is no doubt that these children are seriously handicapped in a number of ways. In addition, their behavior may trigger abuse.

Can child abuse and neglect cause some children to become socially maladjusted?

Yes. Studies have indicated that physical abuse may be a factor in juvenile delinquency.[12] One study found that 68 per cent of the children in the Utah State Development Center, a residential institution for juvenile delinquents, had clear histories of abuse and neglect before coming into conflict with the juvenile justice system.[13] Another study of adolescents' attitudes towards parenting found that 82 per cent of the residents at the Idaho State Youth Services Center, another residential institution for juvenile delinquents, had clear case histories of abuse, neglect, sexual molestation, or exploitation.[14] A team of observers who carried out a study sponsored by the National Center on Child Abuse and Neglect discovered that all of a random sample of institutionalized delinquents interviewed had suffered physical abuse, neglect, or sexual molestation or had come from broken homes.[15]

How are disabled children educationally neglected?

In 1975, at the time of the passage of the Education for All Handicapped Children Act, Congress found the following:[16]

- The special education needs of more than eight million handicapped children were not being met.
- More than half of the handicapped children in the United States did not receive appropriate educational services that would enable them to have full equality of opportunity.
- Of the handicapped children in the United States one million were excluded entirely from the public school system and did not go through the educational process with their peers.
- There were many handicapped children throughout the United States participating in regular school programs whose handicaps prevented them from having a successful educational experience because their handicaps were undetected.
- Because of the lack of adequate services within public schools, families were often forced to find services outside the public school system, often at great distance from their residence and at their own expense.

Many of the problems associated with the identification and education of handicapped children are being solved through the combined efforts of federal, state, and local educational agencies.

How are some of these problems being solved?

Many teachers are concerned with helping handicapped children achieve their greatest potential. Special education has come a long way in helping disabled children achieve by using teaching methods that are appropriate to the children. The special education teacher is interested in what a child can and cannot do and not with how a handicapped child compares with the norm. Such standards are of little value in helping handicapped children move from where they are to whatever they may be able to achieve.

Failure to recognize that abuse and neglect may cause irreparable handicapping conditions in children or that "different" children often invite abuse and neglect is not only costly to the child and his family but also costly to society. The abused or neglected child may suffer irreparable neurological damage, severe physical handicaps, delayed language, or speech impairment, and there is a strong possibility of lowered intellect. An abused or neglected child may experience academic failure, requiring additional costs in providing an appropriate education as required by the Education for All Handicapped Children Act. Abuse and neglect often leads to delinquency and in many cases to adult criminal acts, for which society demands retribution. Again, the costs to society are enormous.

The coexistence of abuse and neglect and handicapping conditions is readily apparent in many of the cases we come in contact with. Those cases in which the relationship is not readily or immediately visible are very real, nonetheless, for the abused child is a disabled child. The abuse and neglect of children robs the victims of a chance to share in the social, economic, and personal benefits of our society and cripples society itself.

How can abuse of disabled children be prevented?

The first step is to increase the public's knowledge about disabling conditions and to realize the alarming number of children affected. In the long term this would help society accept people instead of rejecting them. This social change would reduce the stigma that parents of disabled children feel, and it would make it easier for parents to accept and to cope with their handicapped child, reducing the risk of abuse.

In the short term parents of handicapped children must have emotional and educational support. Hospital staffs can facilitate the parent's adjustment, instilling an acceptance of the handicapped child with a positive attitude in the parents. Staff members should show open affection for the infant, encouraging the parents to touch and tend to the infant, which helps them deal with the reality of the situation. Parents should be fully informed as to the medical prognosis; they should be told about the baby's limitations and expectations and be encouraged by whatever current medical therapy and technology can achieve in developing their child's potentials — whatever they may be.

Parents must have someone to turn to. Isolation is deadly; it magnifies problems and closes horizons. Hot lines and self-help groups are especially useful for some parents, allowing them to share their feelings with others and to gain the support and understanding that relieve stress.

Someone to care for the child, giving the parents respite from constant care and responsibilities, is essential. The immediate and extended family can be especially helpful. Parents should be told about available community services. They must also have a life of their own, and so must other family members. Life should not revolve solely around the disabled child.

How can parents locate programs for disabled children in their own communities?
A good beginning would be to contact the organizations listed at the end of this pamphlet and to look in the Yellow Pages under "Social Service Organizations."

How can parents find out about financial help?
Parents could start by calling their local chapter of the Association for Retarded Citizens, the March of Dimes, and the Easter Seal Society. According to the diagnosis, parents should also contact the foundation concerned with the handicap; for example, if a child is autistic, contact the National Society for Autistic Children in Washington, D.C., or a local chapter. Some hospitals may be able to link parents to local resources.

How can parents locate these foundations?
The National Directory of Services for Handicapped Children — 1980, which is updated periodically, is available in most libraries. It may be purchased for $11.50 (including postage) from the publisher, the Coordinating Council for Handicapped Children, 220 S. State St., Suite 412, Chicago, IL 60604, (312) 939-3515. The directory is arranged in alphabetical order and includes organizations, agencies, day care facilities, nurseries, residential schools, residential placement facilities, and some parent groups.

How can parents locate self-help groups for themselves in their communities?
Every state has a child abuse specialist in its child protective service agency. This agency is usually called the Department of Social Services, Department of Protective Services, or Department of Children and Family Services. This office can help parents locate community self-help groups. For additional sources of information, see the resources listed at the end of this pamphlet.

What should I do if I think that a disabled child is being abused?
Report it. Every state has a child abuse and neglect law that requires certain persons to report suspected child abuse, and every state's child protective service agency is mandated to receive and investigate those reports. Anyone who suspects that a child is being abused in any way should report to the mandated agency or call the local police department.

What happens after a report is made?
The receiving agency makes its investigation and on the basis of its findings decides whether or not abuse has taken place. In less severe cases the agency will help the family obtain whatever services are needed. In some of the more difficult cases the agency may file a petition in court, which then makes the final resolution. A court may order certain actions, for example, removing the child from the home, mandatory participation of the family in a treatment program, or bringing criminal charges against the offender.

Can a report be made anonymously?
Yes, but it's better if you give your name.

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Selected Resources

Child Abuse

The National Committee for Prevention of Child Abuse (NCPCA), 332 S. Michigan Ave., Suite 1250, Chicago, IL 60604-4357, (312) 663-3520. NCPCA, the publisher of this pamphlet, is a private nonprofit organization dedicated to the prevention of child abuse. NCPCA's programs include the development of NCPCA chapters, an annual national media campaign, and the publication of educational materials that deal with parenting, child abuse, and child abuse prevention. The NCPCA Information Packet is free upon request.

Parents Anonymous (P.A.), 22330 Hawthorne Blvd., Suite 208, Torrance, CA 90505. P.A. is an international self-help organization for parents under stress. To locate a local P.A. group, California residents should call toll-free (800) 352-0386; those outside of California should call toll-free (800) 421-0353.

NCCAN Child Abuse Clearinghouse, P.O. Box 1182, Washington, DC 20013, (301) 251-5157. The clearinghouse is sponsored by the National Center on Child Abuse and Neglect, U.S. Department of Health and Human Services. Program information, literature searches, and statistical information are available free upon request.

Self-help

The Self-Help Center, 1600 Dodge Ave., Suite S-122, Evanston, IL 60201, (312) 328-0470. The Self-Help Center is a research and information clearinghouse that offers information free of charge to those seeking self-help group locations, contact persons, and telephone numbers.

Disabled

Special Education Programs (formerly Office of Special Education/Bureau of Education for the Handicapped), U.S. Department of Education, 400 Maryland Ave., S.W., Room 4030, Donohoe Building, Washington, DC 20202, (202) 472-3740. Special Education Programs administers Public Law 94-142, the Education for All Handicapped Children Act, which guarantees appropriate free public education for the handicapped. The Washington, D.C., office and regional offices in the United States receive complaints of violations of the law and act on these complaints if necessary.

Head Start, P.O. Box 1182, Washington, DC 20013, (202) 755-7782. Handicapped children who are eligible for Head Start are preschoolers defined by the Omnibus Budget Reconciliation Act of 1981 (Public Law 97-35) as "mentally retarded, hard of hearing, deaf, speech impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, or other health-impaired children who by reason thereof require special education and related services." Head Start is primarily for those who meet poverty-level requirements, but there are exceptions. To locate a Head Start program in your area, check the telephone directory or contact the national office.

National Audiovisual Center, National Archives and Record Services, General Services Administration, Reference Section, Washington, DC 20409, (301) 763-1896. The "1978 Audiovisual Reference List" and the "1980 Audiovisual Supplement" are available free while the supply lasts. The list and supplement include price and ordering information. Catalogs are also available for audiovisual materials by subject area, for example, special education.

Clearinghouse on the Handicapped, U.S. Department of Education, 400 Maryland Ave., S.W., Room 3106, Switzer Bldg., Washington, DC 20202, (202) 245-0080. The clearinghouse responds to inquiries on a wide range of topics, especially on federal funding for programs serving the disabled, federal legislation affecting the handicapped, and federal programs benefitting handicapped people. "The Pocket Guide to Federal Help for the Disabled Person" and *Programs for the Handicapped*, a bimonthly newsletter, are usually free upon request, as are all other clearinghouse publications.

Closer Look, 1201 16th St., N.W., Washington, DC 20036, (202) 822-7900. Closer Look is a national information center for parents, professionals, students, and disabled adults seeking assistance in dealing with the problems and needs of the mentally, physically, or emotionally disabled. A fact sheet describing Closer Look and a publication list are available free upon request.

Association for Retarded Citizens, 2501 Avenue J, P.O. Box 6109, Arlington, TX 76011, (817) 640-0204. The association is a voluntary citizens organization, with more than 2,000 local units in the United States, that maintains liaisons with comparable organizations in 40 foreign countries and with international bodies. The association serves professionals and parents and addresses issues of retarded people at all age levels. Among the association's services are the dissemination of information on retardation and parent needs and many publications. A catalog and brochure are free upon request.

NICEM (National Information Center for Educational Media), University of Southern California, University Park, Research Annex, Los Angeles, CA 90007, toll-free (800) 421-8711. NICEM's data bases list all materials published in the United States in all major disciplines, including indexes on special education, inservice training materials, and parent materials. Telephone inquiries are free. NICEM also publishes 17 indexes that are available in most libraries.

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Mr. **Holcomb**. The subcommittee will have some questions to submit to both witnesses, and again, I thank you all for attending, and without anything further, the hearing is adjourned.

[Whereupon, at 11:15 a.m., the hearing was adjourned, subject to the call of the Chair.]

APPENDIX

STATEMENT OF BARRY W. LYNN

LEGISLATIVE COUNSEL, AMERICAN CIVIL LIBERTIES UNION

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to submit the views of the American Civil Liberties Union regarding S. 1156, the "Child Victim Witness Protection Act". The ACLU is a membership organization of approximately 250,000 persons dedicated to the preservation and enhancement of the protections granted by the Bill of Rights and other constitutional guarantees.

My comments focus on S. 1156's provision that Crime Victims Fund grants to the states should be premised on enactment of state statutes which "improve the chances of successful criminal prosecution or legal action" in child abuse cases. The bill then describes several "reforms" which are designated as improving the chances of successful prosecution.

One set of reforms includes "modifying certain rules of evidence to allow for the admission of the child victim's hearsay statement of abuse, to permit leading questions to be asked of the child victim, to permit the use of anatomically correct dolls and drawings to describe the abuse, and to establish a presumption that children are competent to testify". I understand from conversations with a member of Senator Denton's staff, that the Senator is willing to accept some amendments to this section which will eliminate some potential constitutional problems. First, we would endorse deletion of the provision to permit the unqualified admission of hearsay statements of abuse. Second, we support efforts to "allow for" a presumption of child competence rather than insisting that states statutorily "establish" such a presumption.

"Leading questions", however, do present some practical problems in child abuse cases because young children remain quite suggestible to accounts of events which did not actually occur. Investigators, prosecutors, social workers, or even parents can plant ideas which are then incorporated into childrens' accounts. Therefore, "leading" questions should be allowed only insofar as they relate to physiological matters which may be difficult for the child to understand. Encouraging the use of anatomically correct dolls for the purpose of aiding children to describe what form of activity they were required to engage in by the defendant may well lead to more accurate testimony and a fairer trial.

The more problematical "reform" is "establishing procedures for the videotaping of the child victim's statement and testimony or the use of closed-circuit television". Again, however, I was informed that the sponsor is willing to accept an additional clause clarifying that such use must be "under circumstances which insure procedural fairness to the accused". I would like to discuss briefly what we feel would help insure such fairness in light of the Sixth Amendment's guarantees that the defendant has the right "to be confronted with the witness against him...and to have the Assistance of Counsel for his defense".

Any videotape (or closed-circuit television) testimony must meet several standards. First, there needs to be an individualized showing that videotaping is necessary to prevent unnecessary mental or emotional harm to the child victim-witness. For example, Florida's statute requires a showing of "substantial likelihood" that the particular child eleven years of age or under "will suffer severe emotional or mental strain if required to testify in open court. *See Washington* v. *State* 452 S. 2d 82 (1984) New Mexico's Supreme Court has adopted rules allowing videotaping of children 13 or under only "for a good cause shown". See State v. Messier 686 P.2d 272 (1984.) Arizona's statute on videotaping of those under 15 was upheld in State v. Melendez 661 P.2d 654 (1982) because there had been testimony from a clinical psychologist that the particular child witness would become uncommunicative if called to testify before a jury.

Second, the Sixth Amendment's confrontation clause "reflects a preference for face-to-face confrontation at trial" both so that an accused can test the witness' recollection of events and so the judge or jury can evaluate witness demeanor to help judge whether he or she is worthy of belief. Roberts v. Ohio _____U.S.____ (1980). For this to have meaning in the context of child abuse cases, several things must occur.

The witness and the defendant should not be prevented from seeing each other unless there is a concrete individualized basis for doing so, such as evidence of intimidation or disruptive behavior by the defendant. See e.g. New Jersey v. Sheppard 484 A 2d 1330 (N.J. Super L. 1984) (extended dicta upholding complex videotaping procedure in child sexual abuse case where defendant threatened witness) Except under the most extraordinary circumstances, videotaped statements which will be used at trial must occur with the defendant present, and only where full opportunity is accorded for the meaningful cross-examination of the witness. In a case with an adult witness, the court in United States v. Benfield 593 F. 2d 815 (1979) ruled unconstitutional the videotaped deposition of a kidnap victim where the defendant viewed the examination of the witness on a monitor in another room and was able to consult with his attorney only by sounding an alarm to indicate a need to talk. In several child abuse cases, the defendant's separation from the witness were grounds for concluding that the defendant's rights were abridged. In Herbert v. Superior Court of Sacramento County 117 Ca. App. 3rd 661, 172 Cal. Rptr. 850 (1981), even an in-court seating arrangement wherein the defendant and victim-witness could not see each other was ruled unconstitutional. The court stressed that it prevented the fact-finder from observing the witness' demeanor "when forced to make his or her accusation before the one person who knows if the witness is truthful. A witness' reluctance to face the accused may be the product of fabrication rather than fear or embarrassment". *See also* *Commonwealth of Kentucky* v. *Willis*, #84, CR 346, Fayette Circuit Court, Sixth Div., Feb. 20, 1985 (Kentucky videotaping statute held unconstitutional).

Collateral to the defendant's confrontation right is his right to be present in the same place as his attorney so that they can personally confer together. Conferring with counsel regularly during cross-examination is frequently a crucial element in the outcome of the case, and essential if a defendant is going to truly assist in his own defense. (Even in the *Sheppard* case, above, the video arrangement required did permit constant private communication between the defendant and counsel.)

In summary, any videotaping system must be based on an individualized assessment that serious harm will be done by in-court testimony and cross-examination. Moreover, any system must allow the defendant to be present to observe the testimony and cross-examination, absent a particularized finding that he has or is likely to engage in improper conduct toward the witness, and be able to assist his counsel during the procedure.

A third "reform" encouraged by this funding mechanism is "extending the statute of limitations in criminal cases of child abuse". This may raise due process issues as well, if so broadly interpreted that even very young children are given many years to initiate charges against other persons.

We clearly recognize that the rights of children and the rights of defendants are in a delicate balance where child abuse allegations are made. Any changes in normal courtroom procedure may be viewed by juries in ways which are highly prejudicial to the defendant. Jurors may assume that it is because the defendant is known to be so dangerous that the witness could not physically appear. We have long passed the point where children are assumed to be incapable of telling the truth. However, sad experience is that they, like every other class of witness, are not always honest either. Actual child abuse, as well as false allegations of it, may both be devastating occurrences. S.1156, with the understandings and reservations discussed here presents a good effort to move positively in the direction of protecting the interests of all parties.

STATEMENT OF JOSEPHINE BULKLEY

concerning the

Child Victim Witness Protection Act (S. 1156) of 1985

Mr. Chairperson and Members of the Subcommittee:

I would like to express appreciation to Senator Specter for the opportunity to present testimony on the Child Victim Witness Protection Act of 1985. I have been working on legal issues relating to child sexual abuse since 1980, and have researched and published a number of articles and books, sponsored conferences, provided technical assistance, and lectured throughout the country on this subject.

The issues I believe you must address closely parallel the issues which states must address under S.1156 in order to be eligible for additional funding to assist child sexual abuse victims in the criminal justice system. S.1156 is designed to encourage states to enact statutes that reduce legal system trauma to children and enhance successful legal actions. Problems relating to the handling of child sexual abuses by the criminal and juvenile justice systems did not become apparent until the late 1970's. It was not until the mid-1970's that child welfare professionals began to see a dramatic rise in reports of sexual abuse. Indeed, the general lack of awareness of the extent of the problem is illustrated by the fact that the 1974 federal Child Abuse Act and many state reporting laws originally did not include sexual abuse in their definition of child abuse. Between 1976 and 1982, however, American Humane Association statistics showed a tenfold increase in official reports of sexual abuse to child protection agencies. Since 1982, child sexual abuse reports have continued to go up, with more cases involving offenders in out-of-home care settings and very young or pre-school age victims.

Beginning in the late 1970's, criminal prosecution of child sex offenders became increasingly more frequent. Traditionally, parental abuse of children was handled by child protection agencies and sometimes required juvenile court action to induce families into treatment or, where necessary to prevent danger to the child, remove the child from the home. The goals of the juvenile court system often make it possible for children to be spared the necessity of testifying in court, coupled with a lower standard of proof, non-penal sanctions, and efforts to provide services and treatment and to preserve the family.

However, in addition to a juvenile court action, many regard criminal prosecution as necessary when a child has been sexually abused or severely physically abused. Although numerous justifications are given for the desirability of criminal prosecution, even in cases involving a parent offender, the recent increase in prosecutions seems to be a result of widespread media attention and greater public awareness of the problem and therefore greater pressure on prosecutors' offices to file charges. Criminal prosecution, however, creates many problems. Indeed, many have advocated that the juvenile court is a better forum for dealing with parental abuse of children because its primary interest is to help the child and family rather than punish the offender. More importantly, however, child abuse cases traditionally have not been criminally prosecuted because these cases are difficult to prove in a criminal proceeding. Not only are persons accused of crimes required to be proven guilty beyond a reasonable doubt, a high standard of proof to meet, but they also are protected by many safeguards under the U.S. Constitution, such as the right to a jury trial, right to counsel, right to confrontation (including cross-examination), right to a public trial, and right to a fair trial.

In child sexual abuse cases, proof of the abuse is especially difficult to obtain. First there is the victim -- often a young child with verbal and cognitive limitations, who often is perceived as lacking credibility, is considered unable to distinguish fact from fantasy, is thought to be more likely to fantasize or fabricate sexual experiences with adults, and is believed to be unable to observe, remember and communicate what happened to him or her, and may be suggestible to adult influences. Yet, recent research suggests that children's abilities are far greater than was once believed. Dr. Gary Melton testified before the Senate Juvenile Justice Subcommittee that children as young as four years old have the potential to give testimony that is as reliable as adults' testimony. Indeed, courts have been known to qualify witnesses as young as 3-1/2 years old. Research shows that a child's memory is not worse than an adult's and may be better under some circumstances. Research also shows that there is little correlation between age and honesty. Finally, many professionals who have worked with child victim/witnesses in the legal system have directly observed numerous children who have accurately recalled experiences and testified effectively in court. Indeed, following recommendations of leading legal commentators and the Federal Rules of Evidence, about half the states have abolished required hearings to determine whether a child is competent to testify. Nevertheless, many states still require a determination of competency before a child may testify when the child is under ten or fourteen years of age.

Additionally, child abuse cases frequently lack direct eyewitness evidence. In sexual abuse cases, medical or physical evidence of the abuse also is often lacking. Thus, the only evidence may be the testimony of a young child. However, until recently, even a competent child victim's testimony was not enough to convict, and a number of states required evidence in addition to a child's testimony in a child sex offense case -- a legal requirement that has never existed for any other crime except rape. This requirement also was based upon now discredited assumptions that sex offense complainants often make false charges. Today, all states have abolished a corroboration requirement for serious sexual offenses against children.

Corroborative evidence nevertheless is very helpful in obtaining a conviction. A child's out-of-court statement of abuse may serve to corroborate the child's testimony or may be admissible even if the child does not testify. States should consider a special hearsay exception for out-of-court statements of abuse if the child testifies or is found to be unavailable, the statement has guarantees of trustworthiness, and there is other corroborative evidence of the act. Hearsay statements of abuse often do not fit within existing exceptions to the hearsay rule, and many courts have strained to apply the spontaneous declarations exception, even though the child's initial complaint might be made several days after the sexual incident. In 1982, only two states had adopted a special exception; in 1985, at least 18 states have adopted special exceptions by statute or court rule.

There are not only difficulties in proving cases of child sexual abuse. The literature is replete with documentation by mental health and child welfare professionals, victim advocates and others involved with child sexual abuse victims that children may suffer additional psychological harm by insensitive legal procedures, including lack of coordination among professionals, repeated interviews with many different professionals, insensitive questioning and medical exams of children, delays, testimony at grand jury, preliminary hearing and trial, and cross-examination. It has been further shown in Seattle, Washington, for example, that by treating victims more sensitively, the child is less likely to retract and the child becomes a better witness, often leading to more guilty pleas or convictions.

Finally, in many cases of child sexual abuse, the offender is a family member (such as a father, step-father or older sibling), and complex family dynamics suggest the need for a range of available dispositions, with alternatives providing treatment for the offender, where appropriate, as well as treatment for the entire family.

Current research suggests a wide range of possibilities for modifying state laws and procedures to make the legal system more sensitive to children, to encourage effective handling and successful outcomes in child sexual abuse cases, and to provide treatment for families, including offenders where appropriate. A comprehensive approach that addresses the investigation, trial and disposition of cases is necessary, especially since very few reported cases of child sexual abuse actually go to trial. Examples of making the legal process more sensitive to children include: (1) coordination of juvenile and criminal court proceedings; (2) provision of a special advocate for the child in all court actions; (3) preventing repeated interviews with children; (4) establishing special sexual abuse prosecution units and assigning the same prosecutor to all stages of the case; (5) developing methods to avoid a child's testimony at grand jury or preliminary hearings and at trial where necessary to prevent trauma without violating the defendant's constitutional rights (such as videotaping and closed-circuit televising a child's testimony, or closing the courtroom); and (6) requiring training of all professionals on legal, child development, and sexual abuse issues.

Methods for improving successful legal outcomes and preventing further abuse include: (1) evidentiary reforms, including hearsay exceptions for a child's out-of-court statement of abuse, elimination of competency tests for child witnesses, and abolition of the marital privilege; (2) statutory authority for issuance of protective orders (e.g., to order the offender out of the home) in any judicial proceeding; (3) reform of laws relating to judicial proceedings involving the non-abusive parent; and (4) special procedures and treatment dispositions for juvenile offenders. Finally, statutory authority for alternatives to traditional prosecution and sentencing should be provided to allow for treatment dispositions.

S.1156 represents an important federal proposal recognizing the problems in the legal system's handling of child sexual abuse cases and the special needs of child victims who must be witnesses. Moreover, it recognizes the serious need for additional funding to enable states to improve their efforts to help sexually abused children in the criminal justice system. However, a number of problems in the proposed legislation should be addressed before the legislation is enacted into law.

A major state and local law reform effort has taken place since the early 1980's as a result of the large number of cases entering the criminal system, an increase in the number of children who must be witnesses in court, and intense media focus on the issue. For example, only four states had videotaping statutes in 1981, while by 1985, 25 states had videotaping legislation, and 16 states had closed-circuit television laws. Although many reforms still have not been adopted, it is likely that most states will have at least one statute in both of the broad areas specified in the bill of minimizing trauma and improving prosecutions. As a result, this legislative proposal may provide additional funds for sexual abuse programs without states having to make any *new* changes. For example, many states require interdisciplinary teams, if not by legislation, in their child protection agency administrative regulations. As noted above, all states have abolished a corroboration requirement for most serious sexual offenses against children. Some states have no reforms in place and this law will compel *all* states to have a minimum level of procedures to improve legal intervention in child sexual abuse cases. Still, it might be advisable to require *each state* to undertake a new reform by requiring the establishment of a state child abuse task force to recommend reforms in each category for each year a state receives funding. This would prevent states that already have at least one reform in each of the two areas specified in the bill from receiving federal funds without making any new changes. Moreover, this encourages states to make ongoing efforts to reform their laws and procedures in these areas.

An alternative approach would be for the legislation to require states to enact laws in specific areas, such as competency, a special hearsay exception, or reducing delays and interviews. This approach would ensure that states have developed procedures to reform laws that are likely to have the greatest impact on improving prosecution and conviction rates, or reducing trauma by the legal process. Further, there is growing consensus that certain reforms are unilaterally beneficial, with only minor potential negative effects. Many innovations for reducing trauma, such as reducing interviews with children, establishing interdisciplinary teams, providing a victim advocate and other similar approaches, generally are not controversial do not involve drastic departures from current legal practices, or do not jeopardize fundamental constitutional rights.

Impressionistic data from jurisdictions that have adopted reforms such as special hearsay exceptions and abolition of competency tests indicates that more cases are being prosecuted and more convictions obtained in child sexual abuse cases. In jurisdictions such as Seattle, Washington where many reforms have been utilized for almost 10 years, it also has been found that most children can give reliable and effective testimony in court without being severely traumatized. As Lucy Berliner, a leading authority in the field and director of the Sexual Assault Center in Seattle notes: "A criminal justice system which does not accommodate a whole class of victims, especially the most vulnerable, helpless and deserving of protection, is hardly fulfilling its function in society. It is intolerable that the opportunity for justice be so unevenly dependent on where the child is victimized. There should be immediate extension of the basic procedural changes to all jurisdictions. Outdated misconceptions about children's competence should no longer influence decision making. Adequate resources must be available to properly staff the systems."

Still, courts as well as the defense bar understandably are skeptical about many reforms because of a desire to protect long-established values in our constitutional system, including the presumption of innocence, the right to a fair trial, and many other constitutional rights. Experts are currently analyzing the benefits as well as disadvantages and problems with recent reform proposals. For example, videotaping or closed circuit television of a child's testimony as well as videotaping interviews with children raise serious constitutional, legal and practical problems. Indeed, those of us who advocate for reform must be circumspect in recommending approaches not yet sufficiently tested in the courts or in practical experience. Studies of the effects of the legal process on children are necessary to identify what factors make certain children most vulnerable or to identify which legal procedures cause the greatest trauma. Further research on children's abilities and understanding of the legal system also should be done. Additionally, as victim advocates have found, special procedures for avoiding a child's testimony at trial, such as videotaping, may not be necessary if sensitive procedures have been instituted at the investigative stage. For these reasons, it may be premature to impose specific requirements on states at this time.

Whether or not specific requirements are imposed, the legislation should include a "laundry list" of possible reform efforts. The legislation currently gives sound examples, but it should be expanded to provide a comprehensive package of possible innovative procedures and approaches. Thank you for allowing me to offer my testimony for your consideration.

DEPARTMENT OF HEALTH & HUMAN SERVICES
Office of the Secretary
Washington D.C. 20201

October 3, 1985

The Honorable Jeremiah Denton
United States Senate
Washington, D.C. 20510

Dear Senator Denton:

Your letter of invitation requesting that the Secretary or her designee appear before the Subcommittee on Juvenile Justice on October 8 has been referred to me for reply.

We at the Department of Health and Human Services share your commitment to reducing trauma to child victims of physical and sexual abuse. However, since the legislation that will be discussed at the hearing would establish a program to be administered by the Department of Justice, we respectfully decline your invitation. It is our understanding that a Justice Department official will represent the Administration's view on the proposed legislation at the hearing.

With deep appreciation for your legislative efforts in behalf of children,

Sincerely,

DeNardis

Lawrence J. DeNardis
Acting Assistant Secretary
for Legislation

U.S. Department of Justice

National Institute of Justice

JAN [illegible]

Office of the Director

Washington, D.C. 20531

Honorable Jeremiah Denton
516 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Denton:

I have enclosed a copy of the National Institute of Justice's report, When the Victim is a Child. As you introduced Senate bill 1156 to provide funds for the states to implement protective reforms regarding investigation and adjudication in child abuse cases, I hope you will find this publication of interest.

Whenever I may be of assistance, please contact me or my Special Assistant Renee Trent at 202/724-2942.

Sincerely,

Chip DRT

James K. Stewart
Director

Enclosure

NOTE FROM SENATOR DENTON:

The N.I.J. report entitled "When the Victim is a Child" endorses a number of the elements which are contained in S. 1156, the Child Victim Witness Protection Act. While the report is too voluminous to be included in the hearing record, I would like to incorportate it by reference as a first rate resource material.

Department of Justice

ADVANCE FOR RELEASE AT 6 P.M., EST
SUNDAY, JANUARY 12, 1986

NIJ
(202) 724-7782

The National Institute of Justice has published a study of new methods for easing the trauma faced by child victims and witnesses who have to go through criminal proceedings, Director James K. Stewart announced today.

The report is designed for prosecutors, judges, police officers and other professionals interested in improving the way the criminal justice system treats child abuse victims, Stewart said.

The study, "When the Victim is a Child," responds to an urgent need expressed by the Attorney General's Task Force on Family Violence, which called for research into the court treatment of child victims. It discusses the competency of child witnesses, child victim advocates, videotaping statements and testimony as well as recommended changes in hearsay statutes. Included is a comparative survey of each state's legislation to protect child witnesses in sexual abuse cases.

Stewart said the Institute, which is a U.S. Department of Justice research agency, commissioned the study "to respond to the concern of professionals that victims of child abuse do not themselves become victims of the system."

The report points out that the true magnitude of child abuse is unknown. Many suspects are never discovered, Stewart explained. "Experts believe the overwhelming majority of children who are sexually abused do not report the events at all during their childhood."

"The problems that all crime victims face in the criminal justice system are exacerbated when the victim is a child," said Assistant Attorney General Lois Haight Herrington. "Most often child victims have been betrayed by someone they've loved and trusted. If they have the courage to report the crime, they are thrust into a system created for adults, one that doubts their credibility and prolongs their agony."

"To be sure, the system does not mistreat the child intentionally, but out of ignorance," Mrs. Herrington commented. "This book is an exceedingly useful tool for reducing that ignorance. It will educate professionals and improve the criminal justice system."

Mrs. Herrington pointed out that the states now receive Federal assistance for improving child victim services through the Victims of Crime Act of 1984.

After discussing in detail the various problems both the system and the child victim face, the report makes a number of recommendations for improvements. For example, it called for an end to state laws requiring that witnesses be at least a certain age. Many states bar or greatly curtail testimony from young witnesses, whereas Federal rules permit testimony from any competent witness irrespective of age.

In addition, the report recommends the adoption of state legislation to permit special exceptions to the hearsay rule for children. Such laws would admit certain out-of-court statements to counselors or prosecutors that might otherwise be ruled out because they are not available from the young witnesses during direct testimony.

Other legal provisions examined in the report include proposals for:

--Permitting a child witness to have a support person during testimony.

--Offering services to explain the court procedures to the child and his or her family.

--Directing law enforcement officers, social service agencies and prosecutors to conduct joint investigations in each child sexual abuse case using a single trained interviewer.

--Scheduling trials to give priority to those involving young victims and discouraging postponements.

The study, which was conducted for the Institute by Abt Associates, Inc., for $75,000, also contains appendixes on interviewing child victims and videotaping a child's statement or testimony.

The publication is for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. The stock number is 027-000-01248-5. The price is $3.25. Microfiche copies are available from the National Criminal Justice Reference Service, Box 6000, Rockville, Maryland 20850, telephone (301) 251-5500. The toll-free number is 800-851-3420.

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After hours contact: Stu Smith (301) 654-1185

U.S. Department of Justice
National Institute of Justice

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November 1985

Prosecution of Child Sexual Abuse: Innovations in Practice

Debra Whitcomb

Child sexual abuse occurs with alarming frequency. The National Center on Child Abuse and Neglect (a division of the U.S. Department of Health and Human Services) estimates that in 1983 nearly 72,000 children were reported as sexually maltreated by a parent or household member.[1] Local law enforcement agencies also receive a large and growing number of reports of child sexual abuse although the FBI's Uniform Crime Reports do not tabulate sexual assaults by age of victim.

Perhaps even more disturbing is that an unknown number of similar cases never reach the attention of authorities. Very young children may lack the verbal capacity to report an incident or the knowledge that an incident is inappropriate or criminal; older children may be too embarrassed. Many child victims are threatened into silence. When they do confide in a trusted adult, their reports may be dismissed as fantasy or outright lies.

Even if the child's story is believed, parents and health and social services professionals have been reluctant to enlist the aid of enforcement agencies, largely for fear of the adverse effects of the criminal justice process on child victims and their families.

Even cases that are filed with police may not result in prosecution for a variety of reasons. These include inability to establish the crime, insufficient evidence, unwillingness to expose the child to additional trauma, and the belief that child victims are incompetent, unreliable, or not credible as witnesses. Yet, public sentiment increasingly favors criminal justice intervention in these cases.

This Research in Brief discusses some problems faced and posed by child victims in the criminal justice system. It reviews legislative revisions, local reforms, and new techniques to alleviate these problems.

Child victims in the criminal justice system

By definition, children are immature in their physical, cognitive, and emo-

From the Director

More than 90 percent of all child abuse cases do not go forward to prosecution. In many of these cases, the decision not to proceed is based on concerns about the child's possible performance on the witness stand or the impact of the court process on the child victim's recovery. The unfortunate result is that many suspects are released without the imposition of justice. They not only escape any penalty but have the opportunity for further abuse of their initial victim or other children.

Both community members and criminal justice professionals are increasingly concerned about our apparent ineffectiveness in dealing adequately with the crime of child sexual abuse.

The National Institute of Justice commissioned Abt Associates, Inc., to review research and experience in dealing with child victims. This *Research in Brief* summarizes the findings discussed in an *Issues and Practices* report, *When the Victim Is a Child*. Included in this *Brief* is a 50-State analysis of relevant statutes enacted as of December 1984.

The *Brief* also suggests new and creative ways of reducing the trauma of trial preparation and court appearances on child sexual abuse victims. At the same time, the approaches outlined maintain the rights of the accused and the integrity of the judicial system.

James K. Stewart
Director
National Institute of Justice

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[1] U.S. Department of Health and Human Services, National Center on Child Abuse and Neglect, *National Study on Child Neglect and Abuse Reporting* (Denver: American Humane Association, 1984).

tional development. This immaturity takes its toll when children are involved in court proceedings. From the time an incident of child sexual abuse is revealed, the victim is interviewed repeatedly by adults representing different agencies with overlapping information needs. Continuances are freely granted, causing delays that erode the children's memories and undermine therapeutic efforts to help them get on with their lives.

Children often do not understand the reasons for repeated interviews and delays. Many choose to end the process by recanting the accusation before their cases can be adjudicated.

When these cases do go to court, an entirely different set of problems arises for children who are called to testify. Judges may seem to loom large and powerful over small children who may feel isolated in the witness stand. Attorneys often use language children do not understand and seem to argue over everything the children say. Defense attorneys ask questions intended to confuse them for reasons children cannot comprehend. Many people are watching every move the child witness makes—especially the defendant.

Under such conditions, children cannot be expected to behave on a par with adults. It is not unusual for them to recant or freeze on the witness stand, refusing to answer further questions. At best, this behavior weakens the Government's case; at worst, it leads to dismissals for lack of evidence.

The problems of immaturity are compounded when the child is a victim of sexual abuse. Generally, the child is the only witness to this abuse, and often there is no physical evidence. Consequently, the case becomes a matter of the child's word against the adult's. This fact is all too obvious to offenders and is very simple for defense attorneys to exploit.

Incest, in particular, traps the child in an extremely precarious position. Children are taught to obey and respect their elders, and incestuous offenders often command secrecy with threats that range from withdrawal of love to death of the child, mother, or other loved ones.

Visions of the father in jail, the mother distraught, the family on welfare, and the children placed in foster care typically suffice to prevent a victim from divulging the incestuous situation, often for years, sometimes forever. A child who reports promptly is by far the exception, not the rule.

If the child's situation becomes known and the child protection or law enforcement authorities intervene in the family, the child may be under intense pressure to retract the allegation. Regardless of whether the father or the child is removed from the home, dissolution of the family appears imminent and the child may shoulder the blame. Such pressure to recant is further intensified the longer the case is delayed, becoming strongest when the child faces the defendant from the witness stand.

A call for change

If child victims are treated insensitively while their allegations are investigated and adjudicated, their participation in the process is likely to suffer, in turn weakening the government's case.

Victim advocates and prosecutors across the country are experimenting with a variety of measures intended to reduce the stress on child victims who become entangled in the complexities of the child protection and criminal justice systems. Several States have already adopted laws that permit alternative—and some very controversial—techniques.

Included in this Research in Brief is a chart analyzing selected provisions of pertinent legislation that had been enacted as of December 1984. The reform measures are listed in two categories: (1) those seeking to alleviate the perceived trauma of giving live, in-court testimony (hearsay exceptions, exclusion of spectators); and (2) those authorizing mechanical interventions to obtain the child's testimony (videotape and closed-circuit television). The chart includes extensive footnotes providing important clarifications or elaborations of its contents.

Also included in this Research in Brief are statutory citations for selected issues in child witness testimony including competency, abused child hearsay exceptions, exclusion of spectators from the courtroom, and the admissibility of videotaped testimony.

This brief discusses some practical concerns surrounding the actual implementation of proposed reforms. The findings are based largely on personal interviews conducted with judges, prosecutors, victim advocates, protective services workers, and law enforcement officers in Des Moines, Iowa; Milwaukee, Wisconsin; Orlando, Florida; and Ventura, California. Each jurisdiction possessed a different array of innovative statutes and procedures, thereby enabling researchers to examine a broad range of alternative techniques.

The results of this study suggest that many of the new reforms have been rarely used. Many unresolved questions about their ability to withstand judicial scrutiny (not addressed by this study) in addition to a number of practical concerns tend to dissuade prosecutors from taking full advantage of the measures.

Practical concerns with the new techniques

The plight of child victims in the courtroom has generated considerable media attention, much of it focused on the potential of modern technology to alleviate the stress of testifying. Videotape and closed circuit television, in particular, have received much media coverage, and legislators have felt pressured to adopt these controversial measures with limited opportunity for reflection and study.

The findings of this study suggest that these techniques can be used only in a small fraction of child sexual abuse cases, and that there are less obtrusive, and less controversial, ways of achieving similar effects for all but the most seriously traumatized children.

Perhaps the most radical of the proposed reform measures is the use of closed circuit television to broadcast the child's live testimony from another room adjacent to the trial courtroom. As of December 1984, this technique was statutorily authorized in only four States: Kentucky, Louisiana, Oklahoma, and Texas.

These laws permit the attorneys and a supportive adult (e.g., victim assistant or close relative) to be present with the child during the broadcast. The defendant and equipment operators may also be present, but the child is not allowed to see or hear them.

Whether the use of closed circuit television satisfies the defendant's constitutional right of confronting his or her accuser has not yet been resolved. But prosecutors and judges question the value of this technique from another standpoint: What effect does the new medium have on jurors' perceptions?

Although there is some empirical evidence to suggest that televised trial materials have no markedly negative effect on courtroom communication between trial participants and jurors,[2] these findings are far from conclusive.

The primary purpose of closed circuit television is to avoid direct confrontation between the child and the defendants, but there are other means to this end. Some prosecutors use their own bodies to block the victim's view of the defendant during the direct examinations. Others simply instruct children to look elsewhere while they testify, or to look for a supportive family member or victim advocate in the courtroom audience. One victim advocate encourages children to tell the judge if the defendant is making faces.

Such instructions may not completely eradicate the child's fear of seeing the defendant in court, but at least they impart a small sense of control in a situation that may seem overpowering to a child.

Videotaping testimony is another technique that is highly praised, yet seldom used where it is authorized. At this writing, at least 14 States have adopted laws authorizing the introduction of videotaped testimony taken at a deposition or preliminary hearing in lieu of live testimony at trial. But some prosecutors point out that the environment at a deposition can be more traumatic than that of a trial courtroom. Depositions take place in small rooms, thereby bringing the child and the defendant into closer physical proximity than in the trial courtroom. The judge may not be there to monitor the behavior of the defendant or his counsel, and victim advocates may not be permitted to attend.

If a court finding of emotional trauma or unavailability is prerequisite to a videotape substitution for live testimony, the child may be subjected to a battery of medical and/or psychiatric tests by examiners for the State and the defense. Some prosecutors also believe that a child who successfully endures all the proceedings leading up to the deposition or preliminary hearing can succeed at trial as well; indeed, by that point the videotaped deposition merely substitutes one formal proceeding for another.

The purpose of the videotape statutes is to spare the child the presumed trauma of a public appearance in court. Yet, many interview respondents observed that the courtroom audience is *not* a major concern for most children. They also noted that there rarely is a general audience; when spectators are present, they can often be persuaded to leave voluntarily by simple request of the prosecutor. Existing statutes for closing courtrooms—another popular remedial technique—are seldom invoked.

At least three States—Texas, Louisiana, and Kentucky—have adopted laws permitting a videotape taken of the child's first statement to be introduced into evidence. For the taping, the child must have been questioned by a non-attorney, and both the interviewer and child must be available for cross-examination. The principal goal of these statutes is to reduce the number of interviews the child must give, but they allow for other benefits as well.

Videotaping the child's first statement can capture the child's most candid reaction to the incident. Prosecutors and victim advocates report that the technique encourages guilty pleas.[3] Police, social workers, and prosecutors in many jurisdictions are already using videotape to achieve these goals, even in the absence of laws authorizing introduction into evidence at trial.

There are drawbacks to these videotape statutes, however. Since child victims must be available for cross-examination, the laws do not protect them from the presumed trauma of testifying at trial and confronting the defendant. And, unless the court places them under a protective order, the videotapes may become public property, perhaps even appear on media broadcasts, causing incalculable trauma for the child and family. Also, the tapes become a liability if the child volunteers contradictory information, or if improper questioning techniques were used to elicit responses.

Useful and effective techniques

Much attention has been focused on technological aids intended to help child victims in the adjudication process. Some of the most useful and effective techniques, however, do not involve advanced technology. Statutes creating special exceptions to hearsay for certain out-of-court statements of child sexual abuse victims fall into this category.

Child sexual abuse victims sometimes make innocent remarks that are quite explicit in their portrayal of sexual activities that should be unknown to a child. For example, when a 7-year-old girl spontaneously asks her father, in child's language, about details of erection and ejaculation, there can be little doubt that this child was sexually abused in some way. Yet this kind of

[2] Gerald R. Miller, "The Effects of Videotaped Trial Materials on Juror Responses," in *Psychology and the Law*, ed. Gordon Bermant, Charles Nemeth, and Neil Vidmar (Lexington, MA: Lexington Books, 1976), 205.

[3] This effect was reported to us in telephone interviews with prosecutors across the country. See also, Reinhardt Krause, "Videotape, CCTV Help Child Abuse Victims Tell Their Story but Legal Problems Remain," in *Law Enforcement Technology* (November 1984), 16, 18.

Exhibit 1

Statutory provisions relevant to child witnesses in sexual abuse cases*

	AL	AK	AZ	AR	CA	CO	CT	DE	DC	FL	GA	HI	ID	IL	IN	IA	KS	KY	LA	ME	MD	MA	MI	MN	MS	MO
LIVE TESTIMONY*																										
Competency																										
- child <14: court determines																										
- child <10: court determines			S			S,2							S		S				S,3				S	S,4		S,2
- child competent if understands oath	S,R	R							C		S	S														
- competent if understands oath					R		C							C		S,R	S	S		R		S				
- every person competent			R	S		R		R		S											S		R		S	
Abused child hearsay exception																										
- child's age (in years)			<10			<15								<13	<10		M							<10		
- court finds reliable																	S							S		
- child testifies			S			S								S	S									S		
- child unavailable; statement corroborated			S			S									S		S							S		
- notice of introduction			S			S									S									S		
Exclusion of spectators from courtroom																										
- victim witness age (in years)	any	<16	any		any					<16	any			<13					<15			<16	any	<16	any	
- during testimony only		S			8					S				S					S				8			
- public transcript provided		S	S		S																					
- media excepted			S							S				S					9							
- family, guardian, moral support exceptions		S			S					S									S							
MECHANICAL TESTIMONY																										
Videotaped testimony admissible																										
- child's age (in years)		<16	<15	<17	<15	<15				<16								<12		<14						
- defendant's presence specified		S	S	S		S				S								8		S						
- opportunity for cross-examination specified		S		S		10														S						
- court findings required (footnote)				11	12	13				14										15						
- court findings include unavailability					S	S																				
- government may call child to testify				S														NO								
- other (footnote)		20			21															22						
Closed circuit testimony available																										
- child's age (in years)																		<12	<14							
- defendant present, but child cannot hear or see																		S	S							
- attorneys present																		S	S							
Abused child videotape/film hearsay exception																										
- child's age (in years)																		<12	<14							
- no attorneys present at taping																		S	S							
- interviewer (child available to testify)																		S	S							

	MT	NE	NV	NH	NJ	NM	NY	NC	ND	OH	OK	OR	PA	RI	SC	SD	TN	TX	UT	VT	VA	WA	WV	WI	WY
LIVE TESTIMONY*																									
Competency																									
- child <14: court determines				C,1										C,1	C,1						C,1		C,1		
- child <10: court determines							S,3			S,R									S,2			S			S
- child competent if understands oath																		R							
- competent if understands oath	R				R			R									S			R					
- every person competent		S	S		S	R			R		S	S	S			S						R		S	R
Abused child hearsay exception																									
- child's age (in years)																<10			M			<10			
- court finds reliable																S			S			S			
- child testifies																S			S			S			
- child unavailable; statement corroborated																S			S			S			
- notice of introduction																						S			
Exclusion of spectators from courtroom																									
- victim witness age (in years)	any			<16			any	any	any							M				any				any	
- during testimony only				10				S								S								8	
- public transcript provided				S																					
- media excepted																S									
- family, guardian, moral support exceptions																								S	
MECHANICAL TESTIMONY																									
Videotaped testimony admissible																									
- child's age (in years)						<13	<12				<12					<15		<12						<16	
- defendant's presence specified	S					S					S							8						S	
- opportunity for cross-examination specified	10					S					S					S								S	
- court findings required (footnote)						16	17									18								19	
- court findings include unavailability																S									
- government may call child to testify						NO					NO							NO						S	
- other (footnote)	23					24	25									21									
Closed circuit testimony available																									
- child's age (in years)											<12							<12							
- defendant present, but child cannot hear or see											S							S							
- attorneys present											S							S							
Abused child videotape/film hearsay exception																									
- child's age (in years)																		<12							
- no attorneys present at taping																		S							
- interviewer (child available to testify)																		S							

SOURCE: Statutes were provided by State governments in the fall of 1984.

*Except for age limits, all numbers refer to footnotes on following page.

See Exhibit 2 for statutory citations and a brief description of related laws not included on the chart.

KEY: S – Statute (includes codified rules) C – Case law only
R – Rule of evidence (not codified) M – Minor child

1. State most likely uses "14 year old" common law standard.
2. Exception: A child victim of a sexual offense is a competent witness and shall be allowed to testify without prior qualification in any judicial proceeding involving the alleged offense. Trier of fact is to determine the weight and credibility to be given to the testimony.
3. Child under 12 years may not testify under oath unless court is satisfied that child understands the nature of an oath.
4. Exception for sexual abuse cases repealed. New language reads: "A child describing any act of sexual contact or penetration performed on or with the child by another may use language appropriate for a child of that age."
5. Corroboration is not required.
6. This provision applies to the preliminary hearing.
7. This provision provides for in-camera testimony.
8. Exception for a reasonable but limited number of members of the public.
9. Defendant present, but the court to ensure child cannot hear or see defendant.
10. Testimony to be taken under the Rules of Evidence.
11. Court order "for good cause shown."
12. Court finding "that further testimony would cause the victim emotional trauma so that the victim is medically unavailable or otherwise unavailable."
13. Upon application, court to make preliminary finding whether "the victim is likely to be medically unavailable or otherwise unavailable . . . at trial; court to find whether "further testimony would cause the victim emotional trauma so that the victim is medically unavailable or otherwise unavailable."
14. Court finding that "there is substantial likelihood that such victim or witness would suffer severe emotional or mental distress if required to testify in open court."
15. Court "expressly finds that the emotional or psychological well-being of the person would be substantially impaired if the person were to testify at trial."
16. Court Rule: Court order upon "Showing that the child may be unable to testify without suffering unreasonable and unnecessary mental or emotional harm." (Statute: Court order "for good cause shown.")
17. For a child witness 12 years old or under, testimony may be videotaped without court findings. For a witness greater than 12 years old, court must find the witness "is likely to suffer severe emotional or mental distress if required to testify in person."
18. Court finding that "further testimony would cause the victim emotional trauma, or that the victim is otherwise unavailable," or that such testimony would "be substantially detrimental to the well-being of the victim."
19. Court order where "there is a substantial likelihood that the child will otherwise suffer emotional or mental strain."
20. The videotapes are listed as an exception to hearsay in R. Evid. R. 804.
21. Testimony to be videotaped at preliminary hearing.
22. Stenographical testimony or other court-approved means also available. Videotapes are specified in the videotape law as an exception to hearsay.
23. Victim in prosecutions for sexual intercourse without consent if victim is less than 16 years, deviate sexual conduct (incest (no age specified)).
24. Videotapes are specified in the videotape law as an exception to hearsay.
25. Videotape law applies to testimony presented to the Grand Jury.

statement does not fit into traditional hearsay exceptions and would be inadmissible in most States. The new laws would admit such a statement, provided that certain indicia of reliability are met, even when the child is unavailable as a witness.

Many effective innovations do not require statutory reform at all. These include the following:

- enhancing the child's communication skills through dolls, artwork, and simplified vocabulary;
- modifying the physical environment—providing a small chair for the child, having the judge sit on a level with the child or wear business clothes instead of a judicial robe; and
- preparing child victims before their courtroom appearances—briefing them on the roles of people in the courtroom, introducing them to the judge, taking them for a tour of the courtroom, and allowing them to sit in the witness chair and speak into the microphone.

By demystifying the courtroom, these techniques help to alleviate children's fear of the unknown, thereby enhancing the accuracy and efficiency of their recall abilities.[4]

Most of the legislative reforms address only the trial experience, and therefore benefit only those children whose cases go to trial. However, the trial is only the culmination of a long series of stressful events that the child endures as the case is adjudicated. Some States have adopted laws intended to ease the child's anxiety throughout the criminal justice process. Such legislation includes the following:

- laws permitting child witnesses to have a supportive person present during court proceedings, and offering the services of the court to explain the proceedings to the child, assist the

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[4] Helen E. Dent and Geoffrey M. Stephenson, "An Experimental Study of the Effectiveness of Different Techniques of Questioning Child Witnesses," in *British Journal of Social and Clinical Psychology* (1979): 41, citing W. Stern, "The Psychology of Testimony," in *Journal of Abnormal and Social Psychology*, Vol. 34 (1939): 3–20; E. Lord, "Experimentally Induced Variations in Rorschach Performance," in *Psychological Monograph*, Vol. 64 (1950): 10; and C. Zimmerman and R.A. Bauer, "Effect of an Audience on What Is Remembered," in *Public Opinion Quarterly*, Vol. 20 (1956): 238–248.

Exhibit 2

Statutory Citations for Selected Issues in Child Witness Testimony

Competency

Ala Code § 12-21-165;
Ariz Rev Stat Ann § 12-2202 (controlling);
Ark Rev Stat Ann § 28-1001;
Cal R Evid R 701;
Colo Rev Stat § 13-90-106(1)(b) (controlling);
Fla Stat § 90.601;
Ga Code §§ 38-1607, 1610;
Hawaii Rev Stat § 621-16;
Idaho Code § 9-202;
Ind Code § 34-1-14-5 (applied to criminal matters via § 35-37-4-1; § 35-1-31-3);
Iowa Code § 622.1;
Kan Stat Ann § 60-417;
Ky Rev Stat § 421.200;
La Rev Stat Ann § 15.469;
Md Cts & Jud Proc Code Ann § 9-101;
Mass Gen Laws Ann ch 233, § 20;
Mich Stat Ann § 27A.2163;
Minn Stat § 595.02(1)(f);
Miss Code Ann § 13-1-3;
Mo Rev Stat § 491.060(2);
Neb Rev Stat § 27-601;
Nev Rev Stat § 50.015;
N J Rev Stat § 2A:81-1 and R Evid R 17;
N Y Crim Proc Law § 60.20 (Consol);
Ohio Rev Code Ann § 2317.01;
Okla Stat tit 12, § 2601;
Or Rev Stat § 40.310;
Pa Stat Ann tit 42, § 5911 (Purdon);
S D Codified Laws Ann § 19-14-1;
Tenn Code Ann § 24-1-101;
Utah Code Ann §§ 78-24-2, 76-5-410;
Wash Rev Code 5.60.050;
Wis Stat § 906.01;
Wyo Stat § 1-138

Some of the above are codified versions of R EVID R 601 In addition, R EVID R 601 is found separately for the following States: Alabama, Alaska, Arizona, Colorado, Delaware, Iowa, Maine, Michigan, Montana, New Mexico, North Carolina, North Dakota, Ohio, Texas, Vermont, Washington, Wyoming

Abused child hearsay exceptions

Ariz Rev Stat § 13-1416 (1984);
Colo Rev Stat § 18-3-411 (3);
Ill Rev Stat ch 38, para 115-10 (1983);
Ind Code § 35-37-4-6 (1984);
Kan Stat Ann § 60-460(dd) (1982);
Minn Stat § 595.02(3) (1984);
S D Codified Laws Ann § 19-16-38 (1984);
Utah Code Ann § 76-5-411 (1983);
Wash Rev Code § 9A.44.120 (1982)

Related provisions Some States permit the use of certain out-of-court statements in a criminal prosecution if the witness is available to testify See, for example, Del Code Ann tit 11, § 3507 (1953) (statement can be consistent or inconsistent)

Exclusion of spectators from courtroom

Ala Code § 12-21-202 (1940);
Alaska Stat § 12.45.048 (1982);
Ariz R Cr P R 9.3(c) (1977);
Cal Penal Code § 868.7(a) (1983);
Fla Stat § 918.16 (1977);
Ga Code § 17-8-53 (1933);
Ill Rev Stat ch 38, para 115-11 (1983);
La Rev Stat Ann § 15.469.1 (1981);
Mass Gen Laws Ann ch 278 §§ 16A (1923), 16C (1978);
Mich Comp Laws § 750.520;
Minn Stat § 631.045 (1982);
Miss Const art III, § 26;
Mont Code Ann § 3-1-313 (1977);
N H Rev Stat Ann § 632-A:8 (1979);
N Y Jud Law § 4 (1968);
N C Gen Stat § 15-166 (1981);
N D Gen Code § 27-01-02 (1974);
S D Codified Laws Ann § 23A-24-6 (1983);
Vt Stat Ann tit 12, § 1901 (1947);
Wis Stat § 970.03(4) (1979)

Related provision Utah Code Ann § 78-74 (1953) Utah's law authorizing the closure of the courtroom in an action of " , seduction, , rape, or assault with intent to commit rape," has been construed to apply only in *civil* actions to avoid conflict with the Constitution

Videotaped testimony admissible

Alaska Stat § 12.45.047 (1982);
Ariz Rev Stat Ann § 12-2311 (1978);
Ark Stat Ann §§ 43-2035 to 43-2037 (1981, 1983);
Cal Penal Code 1346 (1983);
Colo Rev Stat § 18-3-413;
Fla Stat § 918.17 (1984);
Ky Rev Stat § 421.350 (1984);
Me Rev Stat Ann tit 15, § 1205 (1983);
Mont Code Ann §§ 46-15-401 to 46-15-403 (1977);
N M R Cr P R 29.1 (1980) (based on N M Stat Ann § 30-9-17 (1978));
S D Codified Laws Ann § 23A-12-9 (1983);
Tex Code Crim Proc Ann art 38.071 (1983);
Wis Stat § 967.04(7) (1983)

Related provision Iowa Code § 232.96 applies to petition alleging a child in "need of assistance" in juvenile proceedings, *not* criminal prosecutions

Related provisions State law sometimes permits a deposition in sexual assault cases to be used in lieu of live testimony *if* the accused consents See, for example, Va Code § 18.2-67 (law does *not* specify videotape)

Closed circuit testimony available

Ky Rev Stat § 421.350(3) (1984);
La Rev Stat Ann § 15.260 (1984);
Tex Code Crim Proc Ann art 38.071(3) (1983)

Abused child videotape film hearsay exception

Ky Rev Stat § 421.350(1) and (2) (1984);
La Rev Stat Ann §§ 15.440.1 to 15.440.6 (1984);
Tex Code Crim Proc Ann art 38.071(1) and (2) (1983)

family and child, and advise the court and prosecutor;

- laws directing law enforcement, social service agencies, and prosecutors to conduct joint investigations in child sexual abuse cases, using a single trained interviewer; and
- laws attempting to expedite the adjudication process by giving precedence in trial scheduling to sexual offense cases or to cases in which the victim is a minor.

These laws reflect the legislature's concern for child victims, and, for maximum effect, they require the personal commitment of the individuals handling these cases. Indeed, dedicated people in many jurisdictions have introduced these innovations successfully even without legislation. These precautions can and should be provided to every child coming into the system, not only to those whose cases actually come to trial or whose emotional well-being is severely threatened by the prospect of testifying.

Conclusions and recommendations

There are two areas of statutory reform that appear to be necessary and beneficial to many child witnesses. The first is abolishing special competency requirements for children, preferably by establishing a presumption that every witness is competent (as in the Federal Rules of Evidence), and leaving the determination of credibility to the trier of fact.

To date, some 20 States have adopted this standard; three more States have waived their competency requirements in cases of child sexual abuse. Since psychological research on children's memory and morality suggests that all but the youngest children (i.e., age 3 and under) can testify as truthfully and accurately as adults,[5] it seems unfair to impose a special requirement on children.

Secondly, legislatures should adopt special hearsay exceptions to admit certain out-of-court statements that do not fall within the existing exceptions to hearsay. These exceptions will not apply in every prosecution, but they are useful when a child freezes or recants on the witness stand, or when the defense asserts special exceptions for child sexual abuse victims; other States that lack residual hearsay exceptions should consider adopting similar laws.

Regardless of the existing statutory structure in a given State, there is much that can be done to ease the child victim's trauma. Each prosecutor's office should designate at least one attorney to receive training or specialize in child sexual abuse cases. Training should be provided, not only in general concepts of child development and family dynamics, but also in the specifics of State law and case precedent.

Child development and mental health professionals in the community should be tapped for assistance in interviewing children, selecting potential jurors, and formulating opening and closing statements. Above all, prosecutors should work to improve communication and coordination among the several agencies responsible for child welfare. A concentrated team effort is necessary to develop a more rational, cohesive approach to the adjudication of crimes against children.

Each child should have a victim advocate or other supportive adult for assistance and accompaniment throughout the investigation and adjudication processes. Where prosecutors lack access to a victim/witness assistance unit, provision should be made for volunteer support or carrying over the guardian ad litem function from juvenile court proceedings. (The Child Abuse Prevention and Treatment Act of 1974 requires States to appoint a guardian ad litem to represent the best interests of children involved in abuse and neglect proceedings.)

Support persons should receive the same specialized training given to prosecutors so that they can advocate for the child's best interests from a knowledgeable standpoint.

Judges, especially, should be aware of a child's unique situation in the criminal court setting. Some interviewees objected to any intervention on behalf of a witness in the courtroom on grounds that it prejudices the jury to believe the allegation of victimization; certain departures, however, are necessary for child witnesses simply because they are children.

At a minimum, judges should be alert to lines or forms of questioning that confuse or intimidate the child. They should recognize signs of discomfort or embarrassment that may cloud or distort the child's testimony, and then take the initiative, for example, to call a recess to identify and remedy the source of the child's distress.

Whenever possible, and where the prosecutor fails to file a motion, judges should order alternative procedures on their own motion. They should avoid granting continuances unless absolutely necessary, and they should ensure that every child has a supportive friend or advocate in court.

There are many ways to relieve the child victim's anxiety and elicit effective testimony. Drastic interventions—such as closed circuit television and videotaped depositions in lieu of live testimony—should be used only in extraordinary cases.

Sensitive treatment of the child throughout the pretrial period, along with creative interpretations of available statutes and case law precedent, may be no less effective in most cases. These measures should not be overlooked in our desire to aid child victims.

Debra Whitcomb of Abt Associates, a research firm in Cambridge, Massachusetts, was principal investigator for the National Institute of Justice study called **When the Victim Is a Child** *(NCJ 97664). It is on sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. Stock number is 027–000–01248–5.*

Points of view or opinions expressed in this publication are those of the author and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

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[5] For an excellent overview of research on children's capabilities as witnesses, see the *Journal of Social Issues*, Vol. 40 (1984), ed. Gail S. Goodman.

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March 6, 1986

Senator Jeremiah Denton, M.D.
Member, Subcommittee on Juvenile
Justice
Committee on the Judiciary
U.S. Senate
Washington, D.C. 20515

Dear Senator Denton:

The American Academy of Child Psychiatry has approved a policy statement on protecting children undergoing abuse investigations and giving testimony. Your special interest in this issue has been recognized by our members, and we thank you for sponsoring the "Child Victim Witness Protection Act".

Members of the Academy are concerned about the mistreatment of children and adolescents during abuse investigations and trials, especially cases of child abuse. We are working with you to educate those associated with the investigations and trials about modifications that will allow children a safe and just way to participate in the legal system.

Your contribution to the encouragement of states to implement protective reforms in child abuse cases is appreciated. We hope that by sharing this statement with you, our mutual goals will come closer to realization. Please contact the Academy if you or your staff have any questions or comments. We are willing to testify on this issue if future hearings are scheduled.

Thank you again for your interest and support.

Sincerely,

Irving Philips

Irving Philips, M.D.
President

enclosure
IP/pdt

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American Academy of Child Psychiatry

AACP STATEMENT ON PROTECTING CHILDREN UNDERGOING ABUSE INVESTIGATIONS & TESTIMONY

Adopted by Council
February 9, 1986

There is a growing public awareness of child sexual abuse which is increasing the number of cases reported and the number of children undergoing investigation and courtroom procedures. Based on the seriousness, stress, and potential trauma of investigations and testimony for sexually abused children, the Academy recommends modifications to allow children a safe and just way to participate in the legal system.

Child sexual abuse cases require special judicial treatment because:

1. Young victims may not be able to understand trial procedures that have been designed for adults,
2. The atmosphere of the courtroom can be threatening, confusing, and frightening for children,
3. Additional emotional stress for sexually abused children can result from direct testimony in public,
4. Insensitive and repetitive cross examination of abused children can be misperceived by them as further abuse,
5. Face-to-face confrontations by a child victim with the prepetrator may result in severe additional trauma,
6. The judicial process may be blocked when testimony is withheld because of fear or confusion, and
7. The complexities and potential harm to child and parent that arise when false allegations of sexual abuse are made in the context of custody or visitation disputes are apparent.

Recognizing that young children have special needs and modes of self-expression, the following modifications in legal proceedings for cases of child sexual abuse are urgently recommended:

1. Provide a reasonable limit on the number of times a child is interviewed, record or videotape the first interview, and have adequately trained professionals do the first interview,
2. Coordinate and expedite juvenile and criminal court proceedings by means of single, but thorough, investigations, and shared information between civil and criminal cases,
3. The use of child psychiatrists and other adequately trained adults to support and interpret for children during investigations and testimony,

AACP
February 9, 1986

4. The use of child psychiatrists and other qualified professionals to evaluate:
   a) the competency of the child to testify,
   b) the credibility of the child's allegations,
   c) whether the child is emotionally disturbed and in need of treatment,
   d) whether the child will be able to cope with the stress of giving testimony,
   e) whether the child would be psychologically further damaged by giving testimony, and
   f) to ensure that the child receives psychological preparation to appear to court, and
   g) to further evaluate if it is in the child's best interest to have contact with the alleged perpetrator and under what circumstances if any, prior to court proceedings, particularly if the perpetrator is a relative.

5. Modifications to hearsay and other evidentiary restrictions with appropriate safeguards to enable judges to better protect child witness-victims and allow appropriate out of court statements,

6. The exclusion of spectators from the courtroom except as necessary to the trial,

7. Alterations of the courtroom setting to be more comfortable and familiar to small children including testimony in judges chambers, bathroom breaks, snack breaks, age-appropriate testimony duration, child-sized furniture, the use of toys, dolls, drawings and other communication aids,

8. Allowing the child the option not to look at the accused, and allowing the use of live two-way closed circuit television for grand jury appearances and in certain cases during the actual trial,

9. Priority for child abuse cases on court schedules,

10. Training by child psychiatrists and other qualified mental health professionals for police, judges, involved attorneys, and in age-appropriate language and procedures for children,

11. Allow criminal courts the authority to grant civil orders to protect children from further abuse, grant juvenile courts the authority to enforce treatment orders, enhance the existence and public awareness of treatment options, and

12. A limited model program to consider elimination or extension of the statute of limitations in cases of child sexual abuse to allow legal recourse for minors when they reach the age of majority, thus fostering justice, protection and healing.